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AB-651 Nonprofit health facilities: sale of assets: Attorney General approval. (2017-2018)

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Assembly Bill No. 651

CHAPTER 782

An act to amend Sections 5914, 5915, 5916, 5917, 5920, 5921, 5922, and 5923 of, and to add Section 5926 to, the Corporations Code, relating to health facilities.

[Approved by Governor October 14, 2017. Filed with Secretary of State October 14, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 651, Muratsuchi. Nonprofit health facilities: sale of assets: Attorney General approval.

Existing law requires a nonprofit corporation, as defined, 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.

This bill would require the notice to the Attorney General to include a list of the primary languages spoken at the facility and the threshold languages for Medi-Cal beneficiaries, as determined by the State Department of Health Care Services for the county in which the facility is located. The bill also would authorize the Attorney General to require the components of the written notice be provided in any of those languages. This bill would apply to specified health facilities regardless of whether they are currently operating or providing health care services or have a suspended license.

Existing law provides that the Attorney General has discretion to give consent to, give conditional consent to, or to not consent to, the agreement or transaction and requires the Attorney General to consider any factors he or she deems relevant, including, but not limited to, whether the terms are fair and reasonable.

This bill would require the Attorney General to consider whether the agreement or transaction may create a significant effect on the availability and accessibility of cultural interests provided by the facility in the affected community.

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, to issue a notice of the public meeting, as specified, 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.

The bill instead would require the Attorney General to issue the decision within 90 days of the receipt of the written notice from the nonprofit corporation. The bill also would require the Attorney General to provide the notice to the public in English and in the primary languages spoken at the facility and the threshold languages for Medi-Cal beneficiaries for the county in which the facility is located, as specified.

This bill would authorize the Attorney General to enforce the conditions imposed on the Attorney General's consent to a specified agreement or transaction. This bill also would entitle the Attorney General to specific performance, injunctive relief, and other

equitable remedies a court deems appropriate, and to recover its attorney's fees and costs incurred.

This bill would incorporate additional changes to Sections 5914 and 5920 of the Corporations Code proposed by SB 687 to be operative only if this bill and SB 687 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5914 of the Corporations Code is amended to read:

5914. (a) (1) Any nonprofit corporation that is defined in Section 5046 and operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or operates or controls a facility that provides similar health care, regardless of whether it is currently operating or providing health care services or has a suspended license, shall be required to provide written notice to, and to obtain the written consent of, the Attorney General prior to entering into any agreement or transaction to do either of the following:

(A) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity when a material amount of the assets of the nonprofit corporation are involved in the agreement or transaction.

(B) Transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit corporation to any for-profit corporation or entity or to any mutual benefit corporation or entity.

(2) The substitution of a new corporate member or members that transfers the control of, responsibility for, or governance of the nonprofit corporation shall be deemed a transfer for purposes of this article. The substitution of one or more members of the governing body, or any arrangement, written or oral, that would transfer voting control of the members of the governing body, shall also be deemed a transfer for purposes of this article.

(b) The notice to the Attorney General provided for in this section shall include and contain the information the Attorney General determines is required. The notice, including any other information provided to the Attorney General under this article, and that is in the public file, shall be made available by the Attorney General to the public in written form, as soon as is practicable after it is received by the Attorney General. The notice shall include a list of the primary languages spoken at the facility and the threshold languages for Medi-Cal beneficiaries, as determined by the State Department of Health Care Services for the county in which the facility is located. The Attorney General may require the nonprofit corporation to provide certain components of the notice in any of these languages.

(c) This section shall not apply to a nonprofit corporation if the agreement or transaction is in the usual and regular course of its activities or if the Attorney General has given the corporation a written waiver of this section as to the proposed agreement or transaction.

(d) This section shall apply to any foreign nonprofit corporation that operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or a facility that provides similar health care, regardless of whether it is currently operating or providing health care services or has a suspended license.

SEC. 1.5. Section 5914 of the Corporations Code is amended to read:

5914. (a) (1) Any nonprofit corporation that is defined in Section 5046 and operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or operates or controls a facility that provides similar health care, regardless of whether it is currently operating or providing health care services or has a suspended license, shall be required to provide written notice to, and to obtain the written consent of, the Attorney General prior to entering into any agreement or transaction to do any of the following:

(A) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity when a material amount of the assets of the nonprofit corporation are involved in the agreement or transaction.

(B) Transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit corporation to any for-profit corporation or entity or to any mutual benefit corporation or entity.

(C) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of the assets resulting from the reduction or elimination of emergency medical services provided at an emergency center licensed pursuant to Sections 1254, 1255, and 1277 of the Health and Safety Code to a for-profit corporation or entity or to a mutual benefit corporation or entity after the

Attorney General gives, pursuant to Section 5940, consent or conditional consent to the reduction or elimination of emergency medical services.

(2) The substitution of a new corporate member or members that transfers the control of, responsibility for, or governance of the nonprofit corporation shall be deemed a transfer for purposes of this article. The substitution of one or more members of the governing body, or any arrangement, written or oral, that would transfer voting control of the members of the governing body, shall also be deemed a transfer for purposes of this article.

(b) The notice to the Attorney General provided for in this section shall include and contain the information the Attorney General determines is required. The notice, including any other information provided to the Attorney General under this article, and that is in the public file, shall be made available by the Attorney General to the public in written form, as soon as is practicable after it is received by the Attorney General. The notice shall include a list of the primary languages spoken at the facility and the threshold languages for Medi-Cal beneficiaries, as determined by the State Department of Health Care Services for the county in which the facility is located. The Attorney General may require the nonprofit corporation to provide certain components of the notice in any of these languages.

(c) (1) This section shall not apply to a nonprofit corporation if the agreement or transaction is in the usual and regular course of its activities or if the Attorney General has given the corporation a written waiver of this section as to the proposed agreement or transaction, except that this subdivision shall not apply to subparagraph (C) of paragraph (1) of subdivision (a).

(2) The Attorney General shall review and consent to the sale, transfer, lease, exchange, option, conveyance, or disposal of any assets resulting from a qualifying nonprofit corporation's reduction or elimination of emergency medical services that occurred on or after January 1, 2016, provided the Attorney General did not already consent to the transfer, lease, exchange, option, conveyance, or disposal of those assets pursuant to either this section or Section 5920 and those assets remain under the control of the qualifying nonprofit corporation as of the effective date of the act adding this paragraph, notwithstanding the fact that the Attorney General did not review or consent to the closure or reduction pursuant to Section 5940.

(d) This section shall apply to any foreign nonprofit corporation that operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or a facility that provides similar health care, regardless of whether it is currently operating or providing health care services or has a suspended license.

(e) This section shall not be construed to allow the Attorney General to authorize emergency medical services to be provided by a facility that does not meet the requirements of Section 1798.175 of the Health and Safety Code or is not licensed to provide emergency medical services pursuant to Sections 1254, 1255, and 1277 of the Health and Safety Code or to authorize a nonprofit general acute care hospital to reduce operations to provide emergency medical services without providing 24-hour inpatient care with basic services, including, but not limited to, medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. This section shall not be construed to authorize, allow for, or permit operation of an emergency department that does not meet the definition in Section 128700 of the Health and Safety Code. This section shall not be construed to authorize, allow for, or permit emergency medical services to be provided that do not meet the requirements for standby, basic, or comprehensive emergency medical services, as defined in Article 6 (commencing with Section 70401) of Chapter 1 of Division 5 of Title 22 of the California Code of Regulations.

SEC. 2. 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. 3. Section 5916 of the Corporations Code is amended to read:

5916. Prior to issuing any written decision referred to in Section 5915, or giving a written waiver under subdivision (c) of Section 5914, the Attorney General shall conduct one or more public meetings, one of which shall be in the county in which the facility is located, to hear comments from interested parties. At least 14 days before conducting the public meeting, the Attorney General shall provide written notice of the time and place of the meeting through publication in one or more newspapers of general

circulation in the affected community and to the board of supervisors of the county in which the facility is located. This notice shall be provided in English and in the primary languages spoken at the facility and the threshold languages for Medi-Cal beneficiaries, as determined by the State Department of Health Care Services for the county in which the facility is located. If a substantive change in the proposed agreement or transaction is submitted to the Attorney General after the initial public meeting, the Attorney General may conduct an additional public meeting to hear comments from interested parties with respect to that change.

SEC. 4. Section 5917 of the Corporations Code is amended to read:

5917. The Attorney General shall have discretion to consent to, give conditional consent to, or not consent to any agreement or transaction described in subdivision (a) of Section 5914. In making the determination, the Attorney General shall consider any factors that the Attorney General deems relevant, including, but not limited to, whether any of the following apply:

- (a) The terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit corporation.
- (b) The agreement or transaction will result in inurement to any private person or entity.
- (c) Any agreement or transaction that is subject to this article is at fair market value. In this regard, "fair market value" means the most likely price that the assets being sold would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and in their own best interest, and a reasonable time being allowed for exposure in the open market.
- (d) The market value has been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease.
- (e) The proposed use of the proceeds from the agreement or transaction is consistent with the charitable trust on which the assets are held by the health facility or by the affiliated nonprofit health system.
- (f) The agreement or transaction involves or constitutes any breach of trust.
- (g) The Attorney General has been provided, pursuant to Section 5250, with sufficient information and data by the nonprofit corporation to evaluate adequately the agreement or transaction or the effects thereof on the public.
- (h) The agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community.
- (i) The proposed agreement or transaction is in the public interest.
- (j) The agreement or transaction may create a significant effect on the availability and accessibility of cultural interests provided by the facility in the affected community.

SEC. 5. Section 5920 of the Corporations Code is amended to read:

5920. (a) (1) Any nonprofit corporation that is defined in Section 5046 and operates or controls a health care facility, as defined in Section 1250 of the Health and Safety Code, or operates or controls a facility that provides similar health care, regardless of whether it is currently operating or providing health care services or has a suspended license, shall be required to provide written notice to, and to obtain the written consent of, the Attorney General prior to entering into any agreement or transaction to do either of the following:

(A) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to another nonprofit corporation or entity when a material amount of the assets of the nonprofit corporation are involved in the agreement or transaction.

(B) Transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit corporation to another nonprofit corporation or entity.

(2) The substitution of a new corporate member or members that transfers the control of, responsibility for, or governance of the nonprofit corporation, the substitution of one or more members of the governing body that would transfer voting control of the members of the governing body, or any arrangement, written or oral, that would transfer voting control of the entity shall be deemed a transfer for purposes of this article.

(b) The notice to the Attorney General provided for in this section shall contain the information the Attorney General determines is required. The notice, including any other information provided to the Attorney General under this article, and that is the public file, shall be made available by the Attorney General to the public in written form, as soon as is practicable after it is received by the Attorney General. The notice to the Attorney General shall include a list of the primary languages spoken at the facility and the threshold languages for Medi-Cal beneficiaries as determined by the State Department of Health Care Services for the county in

which the facility is located. The Attorney General may require the nonprofit corporation to provide certain components of the notice in any of those languages.

(c) This section shall not apply to a nonprofit corporation if the agreement or transaction is in the usual and regular course of its activities or if the Attorney General has given the corporation a written waiver of this section as to the proposed agreement or transaction.

(d) This section shall apply to any foreign nonprofit corporation that operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or a facility that provides similar health care, regardless of whether it is currently operating or providing health care services or has a suspended license.

(e) This section shall not apply to an agreement or transaction if the other party to the agreement or transaction is an affiliate, as defined in Section 5031, of the transferring nonprofit corporation or entity, and the corporation or entity has given the Attorney General 20 days advance notice of the agreement or transaction.

SEC. 5.5. Section 5920 of the Corporations Code is amended to read:

5920. (a) (1) Any nonprofit corporation that is defined in Section 5046 and operates or controls a health care facility, as defined in Section 1250 of the Health and Safety Code, or operates or controls a facility that provides similar health care, regardless of whether it is currently operating or providing health care services or has a suspended license, shall be required to provide written notice to, and to obtain the written consent of, the Attorney General prior to entering into any agreement or transaction to do any of the following:

(A) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to another nonprofit corporation or entity when a material amount of the assets of the nonprofit corporation are involved in the agreement or transaction.

(B) Transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit corporation to another nonprofit corporation or entity.

(C) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of the assets resulting from the reduction or elimination of emergency medical services provided at an emergency center licensed pursuant to Sections 1254, 1255, and 1277 of the Health and Safety Code to another nonprofit corporation or entity after the Attorney General gives, pursuant to Section 5940, consent or conditional consent to the reduction or elimination of emergency medical services.

(2) The substitution of a new corporate member or members that transfers the control of, responsibility for, or governance of the nonprofit corporation, the substitution of one or more members of the governing body that would transfer voting control of the members of the governing body, or any arrangement, written or oral, that would transfer voting control of the entity shall be deemed a transfer for purposes of this article.

(b) The notice to the Attorney General provided for in this section shall contain the information the Attorney General determines is required. The notice, including any other information provided to the Attorney General under this article, and that is the public file, shall be made available by the Attorney General to the public in written form, as soon as is practicable after it is received by the Attorney General. The notice to the Attorney General shall include a list of the primary languages spoken at the facility and the threshold languages for Medi-Cal beneficiaries as determined by the State Department of Health Care Services for the county in which the facility is located. The Attorney General may require the nonprofit corporation to provide certain components of the notice in any of those languages.

(c) (1) This section shall not apply to a nonprofit corporation if the agreement or transaction is in the usual and regular course of its activities or if the Attorney General has given the corporation a written waiver of this section as to the proposed agreement or transaction, except that this subdivision shall not apply to subparagraph (C) of paragraph (1) of subdivision (a).

(2) The Attorney General shall review and consent to the sale, transfer, lease, exchange, option, conveyance, or disposal of any assets resulting from a qualifying nonprofit corporation's reduction or elimination of emergency medical services that occurred on or after January 1, 2016, provided the Attorney General did not already consent to the transfer, lease, exchange, option, conveyance, or disposal of those assets pursuant to either this section or Section 5914 and those assets remain under the control of the qualifying nonprofit corporation as of the effective date of the act adding this paragraph, notwithstanding the fact that the Attorney General did not review or consent to the closure or reduction pursuant to Section 5940.

(d) This section shall apply to any foreign nonprofit corporation that operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or a facility that provides similar health care, regardless of whether it is currently operating or providing health care services or has a suspended license.

(e) This section shall not apply to an agreement or transaction if the other party to the agreement or transaction is an affiliate, as defined in Section 5031, of the transferring nonprofit corporation or entity, and the corporation or entity has given the Attorney

General 20 days advance notice of the agreement or transaction.

(f) This section shall not be construed to allow the Attorney General to authorize emergency medical services to be provided by a facility that does not meet the requirements of Section 1798.175 of the Health and Safety Code or is not licensed to provide emergency medical services pursuant to Sections 1254, 1255, and 1277 of the Health and Safety Code or to authorize a nonprofit general acute care hospital to reduce operations to provide emergency medical services without providing 24-hour inpatient care with basic services, including, but not limited to, medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. This section shall not be construed to authorize, allow for, or permit operation of an emergency department that does not meet the definition in Section 128700 of the Health and Safety Code. This section shall not be construed to authorize, allow for, or permit emergency medical services to be provided that do not meet the requirements for standby, basic, or comprehensive emergency medical services, as defined in Article 6 (commencing with Section 70401) of Chapter 1 of Division 5 of Title 22 of the California Code of Regulations.

SEC. 6. 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. 7. Section 5922 of the Corporations Code is amended to read:

5922. Prior to issuing any written decision referred to in Section 5921, or giving a written waiver under subdivision (c) of Section 5914, the Attorney General shall conduct one or more public meetings, one of which shall be in the county in which the facility is located, to hear comments from interested parties. At least 14 days before conducting the public meeting, the Attorney General shall provide written notice of the time and place of the meeting through publication in one or more newspapers of general circulation in the affected community and to the board of supervisors of the county in which the facility is located. This notice shall be provided in English and in the primary languages spoken at the facility and the threshold languages for Medi-Cal beneficiaries as determined by the State Department of Health Care Services for the county in which the facility is located. If a substantive change in the proposed agreement or transaction is submitted to the Attorney General after the initial public meeting, the Attorney General may conduct an additional public meeting to hear comments from interested parties with respect to that change.

SEC. 8. Section 5923 of the Corporations Code is amended to read:

5923. The Attorney General shall have discretion to consent to, give conditional consent to, or not consent to any agreement or transaction described in subdivision (a) of Section 5920. In making the determination, the Attorney General shall consider any factors that the Attorney General deems relevant, including, but not limited to, whether any of the following apply:

- (a) The terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit corporation.
- (b) The agreement or transaction will result in inurement to any private person or entity.
- (c) Fair market value of the agreement or transaction, meaning the most likely price that the assets being sold would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably, and in their own best interest, and a reasonable time being allowed for exposure in the open market.
- (d) The market value has been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease.
- (e) The proposed use of the proceeds from the agreement or transaction is consistent with the charitable trust on which the assets are held by the health facility or by the affiliated nonprofit health system.
- (f) The agreement or transaction involves or constitutes any breach of trust.
- (g) The Attorney General has been provided, pursuant to Section 5250, with sufficient information and data by the nonprofit public benefit corporation to evaluate adequately the agreement or transaction or the effects thereof on the public.

(h) The agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community.

(i) The proposed agreement or transaction is in the public interest.

(j) The agreement or transaction may create a significant effect on the availability and accessibility of cultural interests provided by the facility in the affected community.

SEC. 9. Section 5926 is added to the Corporations Code, to read:

5926. The Attorney General may enforce conditions imposed on the Attorney General's consent to an agreement or transaction pursuant to Section 5914 or 5920 to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and other equitable remedies a court deems appropriate for breach of any of the conditions and shall be entitled to recover its attorney's fees and costs incurred in remedying each violation.

SEC. 10. Section 1.5 of this bill incorporates amendments to Section 5914 of the Corporations Code proposed by both this bill and Senate Bill 687. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 5914 of the Corporations Code, and (3) this bill is enacted after Senate Bill 687, in which case Section 1 of this bill shall not become operative.

SEC. 11. Section 5.5 of this bill incorporates amendments to Section 5920 of the Corporations Code proposed by both this bill and Senate Bill 687. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 5920 of the Corporations Code, and (3) this bill is enacted after Senate Bill 687, in which case Section 5 of this bill shall not become operative.