

OTHER PUBLIC INTEREST FACTORS

§ 999.5(d)(7)

Any other information the applicant believes the Attorney General should consider in deciding whether the proposed agreement or transaction is in the public interest.

DCHS's current financial distress is in significant part the consequence of the inadequate reimbursement rates that the DCCHS Health Facilities receive from governmental payors and the disproportionately small revenue from commercial payors in the DCCHS Health Facilities' payor mix to supplement governmental payments. The decline in patient volume of the DCCHS Health Facilities since 2008 and the Health System's high costs of salaries, wages and benefits have compounded the financial decline. Cash reserves and unrestricted investment assets have been depleted. The proceeds of the 2014 Bonds issued by the California Statewide Communities Development Authority in July and August 2014 have provided access to much-needed cash for ongoing operating expenses, but they must be repaid in full no later than July 2015. In the absence of the transaction, financial failure leading to closure of one or more of the DCCHS Health Facilities would result in substantial health care deficits in the communities of the underserved and under-insured of the DCCHS Health Facilities. Avoidance of such an outcome is the essence of the public interest in this transaction. The California legislature invested the Attorney General with the power and duty to protect such public interests when § 5914 was enacted in 1996, with the express admonition to balance the protection of charitable assets with regard for the preservation of health care access that for-profit health care operators contribute when acquiring nonprofit health facilities. The Assembly Committee on Health stated:

Extending the oversight authority of the Attorney General is necessary to correct certain abuses occurring with regard to disposition of charitable assets at the expense of community health systems. However, there are limits and marketplace repercussions which must be acknowledged when increasing regulation results in the creation of disincentives to for-profit investment in financially unstable health systems. In an effort to protect access to health care for the medically indigent and in an effort to protect the 'safety net' providers and facilities, the state would be wise to take caution that it does not make certain their demise.¹

The transaction presents a compelling case for such caution. The legislative origins of §§ 5914 and 5920 underscore that the core public interest factors underlying the statutory consent process are threefold: to ascertain that the transaction yields fair market value, that those beneficially interested in the transaction not be improperly benefited, and that the charitable role of successor trust, if any, in servicing the health care needs of the community previously undertaken by the nonprofit hospital is appropriately continued. Here, the transaction does not involve the conversion of public benefit corporation assets that the Attorney General is empowered to protect² nor will it yield net assets to serve future health care needs. The legacy of the transaction will be twofold: satisfaction of nearly \$1 billion of liabilities in full, without

¹ Assembly Committee on Health, April 23, 1996, comments, p. 6, on A.B 3101.

² The Hospital Corporations are, as noted, nonprofit religious corporations; their assets are different in legal nature than public charitable assets, as unambiguously expressed by the legislature in NCL §§ 9142(c) and 9230(a).

compromise or loss through a costly bankruptcy process, and the preservation of the DCHS Health Facilities themselves. The Definitive Agreement evidences commitments to the preservation of jobs—union and non-union, quality health services, future financial security of retirees, the making of capital investment, spiritual care and the resources of an established health system with total assets in excess of \$3.0 billion³. In these complex and difficult conditions, the public interest lies in placing the DCHS Health Facilities in for-profit hands with sufficient range of motion to find the financial balance of revenue and expense that the DCHS Board finds to be now beyond the reach of the Hospital Corporations, in exactly the kind of transaction contemplated by the Assembly and the original drafters of §§ 5914 and 5920.

³ Total combined assets for Prime Healthcare Services and Prime Healthcare Foundation.