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* This document is current through Register 2013, No. 29, July 19, 2013 *

TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 15. ATTORNEY GENERAL REGULATIONS UNDER NONPROFIT CORPORATION LAW

11 CCR 999.1 (2013)

§ 999.1. General Provisions and Definitions

(a) Giving Notice to and Submitting Requests to Attorney General; When Notice or Request is Deemed "Filed with Attorney General."

For purposes of giving notice to the Attorney General or submitting requests for approval or other action to the Attorney General pursuant to any of the subsections contained in sections 999.2 through 999.5 of these regulations, all notices and requests shall be submitted in writing at the office listed below which is located nearest to the principal office of the corporation on whose behalf the notice or request is submitted.

Attorney General, Charitable Trusts Section
455 golden gate avenue, suite 11000
San Francisco, California 94102-7004

Attorney General, Charitable Trusts Section
300 south spring street
Los Angeles, California 90013-1230

Attorney General, Charitable Trusts Section
1300 I street
p.o. box 944255
Sacramento, California 94244-2550

Written notices or requests shall be deemed filed with the Attorney General when the notices or requests are received at the Office of the Attorney General with the information required by sections 999.2(e), 999.3(e), 999.4 and 999.5 of these regulations.

(b) Attorney General's Acknowledgment of Receipt of Notice or Request.

A conformed copy of the notice or request to the Attorney General, or of the transmittal letter accompanying such notice or request, along with a self-addressed, postage prepaid envelope may be submitted with the original, to be stamped "Received" with the date of receipt stamped thereon and returned to the sender.

(c) Definition of "Material Facts" for Purposes of Disclosure to Attorney General.

Unless otherwise indicated, wherever disclosure of "material facts" to the Attorney General is required pursuant to the subsections contained in sections 999.1 through 999.5 of these regulations, material facts shall include a description of the services or goods to be provided to or by the corporation pursuant to the transaction, the price for such services or

goods to be paid by or to the corporation, the estimated fair market value of the goods or services, the benefit such transaction will confer upon the corporation, whether the board of directors of the corporation has approved the transaction, the factual basis of the board's determination if it has approved the transaction, the disclosure made to the board by the interested director, and a description of the alternative transactions, if any, considered by the board and why any such alternative transactions were not adopted.

(d) Response by Attorney General to Request for Approval of Self-Dealing Transactions, Loans and Guaranty Agreements, Articles, Amendments to Articles of Incorporation.

The Attorney General shall respond to requests for approval of self-dealing transactions, loans and guaranty agreements, and amendments to the articles of incorporation by issuing to the requesting person either a written statement of approval of the proposed action, a written statement of disapproval of the proposed action, or a written statement that the Attorney General declines to comment on the proposed action. In addition, the Attorney General may provide such comments in writing concerning the proposed action as the Attorney General finds appropriate under the circumstances. As a matter of internal policy, the Attorney General will attempt to respond to requests for approval of self-dealing transactions, loans and guaranty agreements, and amendments to the articles of incorporation within 60 days after receipt of all material facts related to the proposed action.

(e) Public Files, Notices, and Requests for Approval by Attorney General To Be Maintained in Public Files; Attorney General's Responses To Be Maintained in Public Files.

A "Public File" is the file of a nonprofit corporation which contains public documents, including registration and financial reporting forms filed pursuant to *Government Code sections 12585 and 12586*, and which is maintained at the Registry of Charitable Trusts, Office of the Attorney General, P.O. Box 903447, Sacramento, California 94203-4470.

All notices and requests for approval submitted to the Attorney General pursuant to the subsections of sections 999.2 through 999.5 of these regulations shall become a part of the Public File of the corporation affected by the proposed action. In the discretion of the Attorney General, exceptions shall be made in the case of documents of a confidential or personal nature (i.e. individual tax returns, legitimate trade secret information, personal resumes, personal loan applications, etc.), where the corporation or person submitting the confidential documents requests that such documents not be maintained in the Public File.

The Attorney General's responses to notices and requests for approval issued pursuant to the subsections of sections 999.2 through 999.5 of these regulations shall become a part of the Public File of the corporation affected by the proposed action.

(f) Mutual Benefit Corporations; Application of Regulations Limited to; Assets Held in Charitable Trust.

For purposes of applying the subsections of sections 999.1 and 999.3 of these regulations to mutual benefit corporations, these regulations apply only to the extent that a mutual benefit corporation holds assets in charitable trust.

(g) Commencement of Statute of Limitations for Self-Dealing Transactions.

The two-year Statute of Limitations for an action seeking remedies for a self-dealing transaction pursuant to *Corporations Code sections 5233(e), 7238 and 9243(e)*, shall commence to run from the date that the written Notice of the Self-Dealing Transaction is filed with the Attorney General, and any such action brought after the date marking the expiration of the second year after such filing shall be barred. "Filed with the Attorney General" shall mean the time when the written notice is received at one of the addresses of the Attorney General listed in subsection 999.1(a) of these regulations. "Year" shall mean a 365/366 day calendar year, as the case may be.

AUTHORITY:

Note: Authority cited: *Sections 5914(b) and 5918, Corporations Code*. Reference: 5142, 5223, 5225, 5226, 5233, 5236, 5238(c)(3), 5617, 5820, 5913, 5914(b), 5918, 6010, 6510(d), 6611(a), 6612(a), 6613(c), 6617(b), 6716(b) and (c), 6721(a) and (b), 7142, 7223, 7225, 7238, 7616, 7913, 8010, 8510, 8611, 8612, 8613, 8616, 8723, 9230, 9680, Corporations Code.

HISTORY:

1. New subchapter 15 (Sections 999.1-999.4) filed 4-18-80; effective thirtieth day thereafter (Register 80, No. 16).

2. Amendment of subsection (a) and Note filed 5-22-96; operative 6-21-96 (Register 96, No. 21).
3. Amendment of subsections (a), (c) and (e) and amendment of Note filed 1-17-97 as an emergency; operative 1-17-97 (Register 97, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-19-97 or emergency language will be repealed by operation of on the following day.
4. Certificate of Compliance as to 1-17-97 order transmitted to OAL 5-7-97 and filed 6-19-97 (Register 97, No. 25).
5. Change without regulatory effect amending section filed 1-9-2006 pursuant to *section 100, title 1, California Code of Regulations* (Register 2006, No. 2).

NOTES:**LexisNexis 50 State Surveys, Legislation & Regulations**

Non-Profit Organizations



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TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 15. ATTORNEY GENERAL REGULATIONS UNDER NONPROFIT CORPORATION LAW

11 CCR 999.2 (2013)

§ 999.2. Public Benefit Corporations

(a) Written Notice to Attorney General of Self-Dealing Transaction.

Corporations Code section 5233(e) provides that an action under section 5233(c) seeking remedies for a self-dealing transaction must be filed within two years after written notice setting forth the material facts of the transaction and the director's interest is filed with the Attorney General in accordance with regulations adopted by the Attorney General.

For purposes of section 5233(e), a written notice of a self-dealing transaction shall be deemed filed with the Attorney General when it is submitted in accordance with subsection 999.1(a) of these regulations.

The written notice of a self-dealing transaction to the Attorney General shall contain the following:

(1) A letter signed on behalf of the corporation by an authorized director or officer thereof, or by or on behalf of a director or officer of the corporation setting forth a detailed description of the self-dealing transaction, the extent to which any director has a material financial interest in the self-dealing transaction, and all material facts concerning the self-dealing transaction. "Material facts" are defined in subsection 999.1(c) of these regulations.

(2) A copy of the corporation's current financial statement as of a date within ninety days preceding the filing of the notice or request, except to the extent already on file with the Registry of Charitable Trusts.

(3) A copy of the articles of incorporation and amendments thereto, except to the extent already on file with the Registry of Charitable Trusts.

(b) Written Request for Attorney General's Approval of Self-Dealing Transaction.

Corporations Code section 5233(d) provides that no remedies shall be granted in any action for a self-dealing transaction if the Attorney General or the court has approved the transaction before or after it was consummated.

A request for approval by the Attorney General of a self-dealing transaction shall be submitted in writing in accordance with subsection 999.1(a) of these regulations.

A request for approval by the Attorney General of a self-dealing transaction shall contain the following:

(1) A letter signed on behalf of the corporation by an authorized director or officer thereof, or by or on behalf of a director of the corporation, setting forth a detailed description of the self-dealing transaction, the extent to which any director has a material financial interest in the self-dealing transaction, and all material facts concerning the self-dealing transaction. "Material facts" are defined in subsection 999.1(c) of these regulations.

11 CCR 999.2

(2) A copy of the corporation's current financial statement as of a date within ninety days preceding the filing of the notice or request, except to the extent already on file with the Registry of Charitable Trusts.

(3) A copy of the articles of incorporation and amendments thereto, except to the extent already on file with the Registry of Charitable Trusts.

(4) A copy of the bylaws and amendments thereto, except to the extent already on file with the Registry of Charitable Trusts.

(5) Copies of all minutes of meetings of the board of directors and committees of the board of directors that reflect any discussions or evaluations of the self-dealing transaction.

(6) A letter signed by the interested director setting forth a description of the director's material financial interest in the self-dealing transaction, listing all material facts, as defined in subsection 999.1(c) of these regulations, concerning the transaction, and all facts disclosed by the interested director to the board of directors concerning the transaction. (Note: Disclosure of this information in the corporation's letter, pursuant to subsection 999.2(b)(1), may eliminate the need for the letter from the interested director, to the extent the information in the interested director's letter would duplicate information in the corporation's letter.)

(7) The Attorney General may require submission of additional information by the corporation and its directors in order to complete an analysis of the self-dealing transaction.

(c) Attorney General's Approval of Loans or Guarantees to a Director.

Corporations Code section 5236 prohibits a public benefit corporation from making any loan or guaranty to any director or officer, unless approved by the Attorney General.

For purposes of section 5236, a request for the Attorney General's approval of a loan or guaranty to a director or officer shall be submitted in writing in accordance with subsection 999.1(a) of these regulations.

The written request for Attorney General's approval of a loan or guaranty shall contain the following:

(1) A letter signed on behalf of the corporation by an authorized director or officer thereof, or by or on behalf of a director or officer of the corporation, setting forth a detailed description of the loan or guaranty and all material facts concerning the loan or guaranty. "Material facts" are defined in subsection 999.1(c) of these regulations.

(2) Copies of the loan or guaranty agreement, note and related security agreements;

(3) A copy of the corporation's current financial statement as of a date within ninety days preceding the filing of the notice or request, except to the extent already on file with the Registry of Charitable Trusts.

(4) A copy of the articles of incorporation and amendments thereto, except to the extent already on file with the Registry of Charitable Trusts.

(5) A copy of the bylaws and amendments thereto, except to the extent already on file with the Registry of Charitable Trusts.

(6) Copies of all minutes of meetings of the board of directors and committees of the board of directors that reflect any discussions or evaluations of the loan or guaranty.

(7) A letter signed by the interested director setting forth a description of the director's material financial interest in the loan or guaranty, listing all material facts, as defined in subsection 999.1(c) of these regulations, concerning the transaction, and all facts disclosed by the interested director to the board of directors concerning the transaction. (Note: Disclosure of this information in the corporation's letter, pursuant to subsection 999.2(c)(1), may eliminate the need for the letter from the interested director, to the extent the information in the interested director's letter would duplicate information in the corporation's letter.)

(8) The Attorney General may require submission of additional information by the corporation and its directors in order to complete an analysis of the loan or guaranty.

(d) Request for Attorney General's Ruling on Amendment of Corporate Articles of Incorporation.

Corporations Code section 5820 provides that the Attorney General may, at the corporation's request, give rulings as to whether the Attorney General will or may oppose a proposed amendment to the articles of incorporations, as inconsistent with or proscribed by the requirement of a charitable trust.

For purposes of section 5820, a request for the Attorney General's ruling on a proposed amendment to the articles of incorporation shall be submitted in writing in accordance with section 999.1(a) of these regulations.

The written request for the Attorney General's ruling shall contain the following:

(1) A letter signed on behalf of the corporation by any officer or director thereof setting forth a detailed description of the proposed amendment to the articles of incorporation and all material facts concerning the amendment. Material facts shall include the reasons for the amendment, the benefit such amendment will confer upon the corporation, whether the board of directors has approved the amendment, and the criteria used by the board to evaluate and approve the amendment.

(2) A copy of the corporation's current financial statement as of a date within ninety days preceding the filing of the notice or request, except to the extent already on file with the Registry of Charitable Trusts.

(3) A copy of the articles of incorporation and amendments thereto, except to the extent already on file with the Registry of Charitable Trusts.

(4) A copy of the bylaws and amendments thereto, except to the extent already on file with the Registry of Charitable Trusts.

(5) Copies of all minutes of meetings of the board of directors and committees of the board of directors that reflect any discussions or evaluations of the article amendment to the articles of incorporation.

(6) The Attorney General may require submission of additional information by the corporation and its directors in order to complete an analysis of the article amendment.

(e) Giving Notice to the Attorney General; Attorney General's Involvement.

The following sections of the Corporations Code provide for the involvement of the Attorney General, and, where appropriate, for notice to the Attorney General, in certain actions and proceedings by, or relating to, a public benefit corporation:

Corp. Code § 5142 (action for breach of trust)

Corp. Code § 5223 (removal for fraud)

Corp. Code § 5225 (deadlock)

Corp. Code § 5226 (resignation by last director)

Corp. Code § 5233 (self-dealing)

Corp. Code § 5236 (loan to a director or officer)

Corp. Code § 5238(c)(3) (indemnity)

Corp. Code § 5617(b) (validity of election)

Corp. Code § 5913 (sale of assets)

Corp. Code § 5914 (proposed transfer of health facilities)

Corp. Code § 5920 (proposed transfer of health facilities)

Corp. Code § 6010 (merger)

Corp. Code §§ 6510(d), 6716(b)(c) (involuntary dissolution)

Corp. Code §§ 6611(a), 6612(a), 6613(c), 6617(b), 6716(b)(c) (voluntary dissolution)

Corp. Code § 6721(a) and (b) (recovery of distribution)

Communications and notices to the Attorney General pursuant to the foregoing sections shall be submitted in writing in accordance with subsection 999.1(a) of these regulations.

In addition to the information required in the Corporations Code and in these regulations for communications and notices to the Attorney General under specific circumstances, notice to the Attorney General pursuant to the foregoing sections of the Corporations Code shall contain written information sufficient to enable the Attorney General to review and evaluate the action or proceeding, the time, date and place at which the action or proceeding will occur, or has occurred, and a statement indicating whether an approval, ruling, waiver or other action by the Attorney General is sought.

AUTHORITY:

Note: Authority cited: *Sections 5914(b) and 5918, Corporations Code*. Reference: Sections 5142, 5223, 5225, 5226, 5233, 5236, 5238(c)(3), 5617, 5820, 5913, 5914(b), 5918, 6010, 6510(d), 6611(a), 6612(a), 6613(c), 6617(b), 6716(b) and (c) and 6721(a) and (b), Corporations Code.

HISTORY:

1. Amendment of last paragraph and Note filed 5-22-96; operative 6-21-96 (Register 96, No. 21).
2. New subsection (e), subsection relettering, and amendment of newly designated subsection (f) and Note filed 1-17-97 as an emergency; operative 1-17-97 (Register 97, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-19-97 or emergency language will be repealed by operation of on the following day.
3. Certificate of Compliance as to 1-17-97 order transmitted to OAL 5-7-97 and filed 6-19-97 (Register 97, No. 25).
4. Repealer of subsection (e) (reserved) and amendment of subsection (f) filed 2-4-2000 as an emergency; operative 2-4-2000 (Register 2000, No. 5). A Certificate of Compliance must be transmitted to OAL by 6-5-2000 or emergency language will be repealed by operation of law on the following day.
5. Repealer of subsection (e) (reserved) and amendment of subsection (f) refiled 6-5-2000 as an emergency; operative 6-5-2000 (Register 2000, No. 23). A Certificate of Compliance must be transmitted to OAL by 10-3-2000 or emergency language will be repealed by operation of law on the following day.
6. Repealer of subsection (e) (reserved) and amendment of subsection (f) refiled 10-2-2000 as an emergency; operative 10-2-2000 (Register 2000, No. 40). A Certificate of Compliance must be transmitted to OAL by 1-30-2001 or emergency language will be repealed by operation of law on the following day.
7. Repealer of subsection (e) (reserved) and amendment of subsection (f) refiled 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1-30-2001 order transmitted to OAL 3-9-2001 and filed 4-20-2001; operative 5-20-2001 (Register 2001, No. 16).
9. Change without regulatory effect amending section filed 1-9-2006 pursuant to *section 100, title 1, California Code of Regulations* (Register 2006, No. 2).
10. Change without regulatory effect repealing subsection (e) [Reserved] and relettering subsection (f) to subsection (e) filed 7-12-2006 pursuant to *section 100, title 1, California Code of Regulations* (Register 2006, No. 28).

NOTES:

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TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 15. ATTORNEY GENERAL REGULATIONS UNDER NONPROFIT CORPORATION LAW

11 CCR 999.3 (2013)

§ 999.3. Mutual Benefit Corporations

(a) Written Notice to Attorney General of Self-Dealing Transaction. *Corporations Code section 7238* provides that where a mutual benefit corporation holds assets in charitable trust, the conduct of its directors shall be governed by the standards of conduct for directors of public benefit corporations, in respect to the assets held in charitable trust. Thus, *Corporations Code section 7238* applies the provisions of section 5233 to self-dealing transactions by a mutual benefit corporation in respect to assets held in charitable trust.

Corporations Code section 5233(e) provides that an action under section 5233(c) seeking remedies for a self-dealing transaction must be filed within two years after written notice setting forth the material facts of the transaction and the director's interest is filed with the Attorney General in accordance with regulations adopted by the Attorney General.

For purposes of sections 7238 and 5233(e), a written notice of a self-dealing transaction shall be deemed filed with the Attorney General when the written notice of the self-dealing transaction is submitted in accordance with subsection 999.1(a) of these regulations.

The written notice of a self-dealing transaction to the Attorney General shall contain the following:

(1) A letter signed on behalf of the corporation by an authorized director or officer thereof, or by or on behalf of a director or officer of the corporation, setting forth a detailed description of the self-dealing transaction, the extent to which any director has a material financial interest in the self-dealing transaction, and all material facts concerning the self-dealing transaction. "Material facts" are defined in subsection 999.1(c) of these regulations.

(2) A copy of the corporation's current financial statement as of a date within ninety days preceding the filing of the notice or request, except to the extent already on file with the Registry of Charitable Trusts.

(3) A copy of the articles of incorporation and amendments thereto, except to the extent already on file with the Registry of Charitable Trusts.

(b) Written Request for Attorney General's Approval of Self-Dealing Transaction. *Corporations Code section 7238* provides that where a mutual benefit corporation holds assets in charitable trust, the conduct of its directors shall be governed by the standards of conduct for directors of public benefit corporations in respect to the assets held in charitable trust. Thus, *Corporations Code section 7238* applies the provisions of section 5233 to self-dealing transactions by a mutual benefit corporation in respect to assets held in charitable trust.

Corporations Code section 5233(d) provides that no remedies shall be granted in any action for a self-dealing transaction if the Attorney General or the court has approved the transaction before or after it was consummated.

A request for approval by the Attorney General of a self-dealing transaction shall be submitted in writing in accordance with subsection 999.1(a) of these regulations.

A request for approval by the Attorney General of a self-dealing transaction shall contain the following:

(1) A letter signed on behalf of the corporation by an authorized director or officer thereof, or by or on behalf of a director of the corporation, setting forth a detailed description of the self-dealing transaction, the extent to which any director has a material financial interest in the self-dealing transaction, and all material facts concerning the self-dealing transaction. "Material facts" are defined in subsection 999.1(c) of these regulations.

(2) A copy of the corporation's current financial statement as of a date within ninety days preceding the filing of the notice or request, except to the extent already on file with the Registry of Charitable Trusts.

(3) A copy of the articles of incorporation and amendments thereto, except to the extent already on file with the Registry of Charitable Trusts.

(4) A copy of the bylaws and amendments thereto, except to the extent already on file with the Registry of Charitable Trusts.

(5) Copies of all minutes of meetings of the board of directors and committees of the board of directors that reflect any discussions or evaluations of the self-dealing transaction.

(6) A letter signed by the interested director setting forth a description of the director's material financial interest in the self-dealing transaction, listing all material facts, as defined in subsection 999.1(c) of these regulations, concerning the transaction, and all facts disclosed by the interested director to the board of directors concerning the transaction. (Note: Disclosure of this information in the corporation's letter, pursuant to subsection 999.3(b)(1), may eliminate the need for the letter from the interested director to the extent the information in the interested director's letter would duplicate information in the corporation's letter.)

(7) The Attorney General may require submission of additional information by the corporation and its directors in order to complete analysis of the self-dealing transaction.

(c) Attorney General's Approval of Loans or Guaranties to a Director. *Corporations Code section 7238* provides that where a mutual benefit corporation holds assets in charitable trust, the conduct of its directors shall be governed by the standards of conduct for directors of public benefit corporations in respect to the assets held in charitable trust. Thus, *Corporations Code section 7238* applies the provisions of section 5236 to director or officer loans or guaranties by a mutual benefit corporation, if such loans or guaranties consist of, or are secured by, assets held in charitable trust.

Corporations Code section 5236 prohibits a public benefit corporation from making any loan or guaranty to any director or officer, unless approved by the Attorney General.

For purposes of sections 7238 and 5236, a request for the Attorney General's approval of a loan or guaranty to a director or officer shall be submitted in writing in accordance with subsection 999.1(a) of these regulations.

The written request for Attorney General's approval of a loan or guaranty shall contain the following:

(1) A letter signed on behalf of the corporation by an authorized director or officer thereof, or by or on behalf of a director or officer of the corporation, setting forth a detailed description of the loan or guaranty and all material facts concerning the loan or guaranty. "Material facts" are defined in subsection 999.1(c) of these regulations.

(2) Copies of the loan or guaranty agreement, note and related security agreements.

(3) A copy of the corporation's current financial statement as of a date within ninety days preceding the filing of the notice or request, except to the extent already on file with the Registry of Charitable Trusts.

(4) A copy of the articles of incorporation and amendments thereto, except to the extent already on file with the Registry of Charitable Trusts.

(5) A copy of the bylaws and amendments thereto, except to the extent already on file with the Registry of Charitable Trusts.

(6) Copies of all minutes of meetings of the board of directors and committees of the board of directors that reflect any discussions or evaluations of the loan or guaranty.

(7) A letter signed by the interested director setting forth a description of the director's material financial interest in the loan or guaranty, listing all material facts, as defined in subsection 999.1(c) of these regulations, concerning the transaction and all facts disclosed by the interested director to the board of directors concerning the transaction. (Note: Disclosure of this information in the corporation's letter, pursuant to subsection 999.3(c)(1) may eliminate the need for the letter from the interested director to the extent the information in the interested director's letter would duplicate information in the corporation's letter.)

(8) The Attorney General may require submission of additional information by the corporation and its directors in order to complete an analysis of the loan or guaranty.

(d) Request for Attorney General's Ruling on Amendment of Corporate Articles of Incorporation. *Corporations Code section 7820* provides that the Attorney General may, at the corporation's request, give rulings as to whether the Attorney General will or may oppose a proposed amendment to the articles of incorporation, as inconsistent with, or proscribed by, the requirement of a charitable trust.

For purposes of section 7820, a request for the Attorney General's ruling on a proposed amendment to the articles of incorporation shall be submitted in writing in accordance with subsection 999.1(a) of these regulations.

The written request for the Attorney General's ruling shall contain the following:

(1) A letter signed on behalf of the corporation by any officer or director thereof setting forth a detailed description of the proposed amendment to the articles of incorporation and all material facts concerning the amendment. Material facts shall include the reasons for the amendment, the benefit the amendment will confer upon the corporation, whether the board of directors has approved the amendment, and the criteria used by the board to evaluate and approve the amendment.

(2) A copy of the corporation's current financial statement as of a date within ninety days preceding the filing of the notice or request, except to the extent already on file with the Registry of Charitable Trusts.

(3) A copy of the articles of incorporation and amendments thereto, except to the extent already on file with the Registry of Charitable Trusts.

(4) A copy of the bylaws and amendments thereto, except to the extent already on file with the Registry of Charitable Trusts.

(5) Copies of all minutes of meetings of the board of directors and committees of the board of directors, that reflect any discussions or evaluations of the amendments to the articles of incorporation.

(6) The Attorney General may require submission of additional information by the corporation and its directors in order to complete an analysis of the amendments to the articles of incorporation.

(e) Giving Notice to the Attorney General; Attorney General's Involvement. The following sections of the Corporations Code provide for the involvement of the Attorney General, and, where appropriate, for notice to the Attorney General, in certain actions and proceedings by or relating to a mutual benefit corporation:

Corp. Code § 7142(a) (action for breach of charitable trust)

Corp. Code § 7223(b) (action to remove director for fraud)

Corp. Code § 7225(c) (appointment of provisional director where board deadlocked)

Corp. Code § 5233 (through § 7238) (self-dealing)

Corp. Code § 5236 (through § 7238) (loan to a director or officer)

Corp. Code § 7238(c)(3) (indemnity)

Corp. Code § 7616(b) (action to determine validity of election)

Corp. Code § 7913 (disposal or sale of assets)

Corp. Code § 8010 (merger with public benefit, religious corporation)

Corp. Code §§ 8510(e), 8611(a), 8612(a), 8613(a), 8617(b), 8716(b)(c) (dissolution)

Corp. Code § 8723(b) (suit against corporation after dissolution)

Communications and notices to the Attorney General pursuant to the foregoing sections shall be submitted in writing in accordance with subsection 999.1(a) of these regulations.

In addition to the information required in the Corporations Code and in these regulations for communications and notices to the Attorney General under specific circumstances, notice to the Attorney General pursuant to the foregoing sections of the Corporations Code shall contain written information sufficient to enable the Attorney General to review and evaluate the action or proceeding, the time, date and place at which the action or proceeding will occur, or has occurred, and a statement indicating whether an approval, ruling, waiver or other action by the Attorney General is sought.

AUTHORITY:

Note: Authority and references cited: *Sections 7142, 7223, 7225, 7238, 7616, 7913, 8010, 8510, 8611, 8612, 8613, 8617, 8716, 8723, Corporations Code.*

HISTORY:

1. Amendment of last paragraph and Note filed 5-22-96; operative 6-21-96 (Register 96, No. 21).
2. Change without regulatory effect amending section filed 1-9-2006 pursuant to *section 100, title 1, California Code of Regulations* (Register 2006, No. 2).

NOTES:

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CHAPTER 15. ATTORNEY GENERAL REGULATIONS UNDER NONPROFIT CORPORATION LAW

11 CCR 999.4 (2013)

§ 999.4. Religious Corporations

Giving Notice of dissolution to the Attorney General.

Communications and notices to the Attorney General pursuant to *Corporations Code section 9680* (dissolution) shall be submitted in writing in accordance with subsection 999.1(a) of these regulations.

In addition to the information required in the Corporations Code and in these regulations for communications and notices to the Attorney General under specific circumstances, notice to the Attorney General pursuant to *section 9680 of the Corporations Code* shall contain written information sufficient to enable the Attorney General to review and evaluate the disposition of assets pursuant to the dissolution.

AUTHORITY:

Note: Authority and references cited: Sections 9230, 9680(a) and (e), Corporations Code.

HISTORY:

1. Repealer of subsections (a)-(c)(6) and subsection (d) designator and amendment of former subsection (d) and Note filed 5-22-96; operative 6-21-96 (Register 96, No. 21).
2. Change without regulatory effect amending section filed 1-9-2006 pursuant to *section 100, title 1, California Code of Regulations* (Register 2006, No. 2).

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Non-Profit Organizations



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TITLE 11. LAW
 DIVISION 1. ATTORNEY GENERAL
 CHAPTER 15. ATTORNEY GENERAL REGULATIONS UNDER NONPROFIT CORPORATION LAW

11 CCR 999.5 (2013)

§ 999.5. Attorney General Review of Proposals to Transfer Health Facilities Under Corporations Code Sections 5914 et seq. and 5920 et seq

(a) Written Notice to Attorney General of Proposed Transfer of Health Facility; Waiver of Notice.

(1) Any nonprofit corporation that is defined in *Corporations Code section 5046* and operates or controls a health facility or a facility that provides similar health care, shall provide written notice to, and 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 either to a for-profit corporation or entity or 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 either to any for-profit corporation or entity or to another nonprofit corporation or, entity.

(2) For purposes of section 999.5 of these regulations, an agreement or transaction involves a "material amount of the assets or operations" if either:

(A) The agreement or transaction directly affects more than 20% of the value of the health facilities or facilities that provide similar health care that are operated or controlled by the nonprofit corporation; or

(B) The agreement or transaction involves the sale, transfer, exchange, change in control or governance of, or otherwise disposes of any health facility or facility that provides similar health care that is operated or controlled by the nonprofit corporation and that has a fair market value that exceeds \$ 3 million; or

(C) The agreement or transaction involves the sale, transfer, exchange, change in control or governance of, or otherwise disposes of any general acute care hospital as defined in *Health and Safety Code section 1250(a)*.

(3) For purposes of section 999.5 of these regulations, an agreement or transaction will "transfer control, responsibility, or governance" if:

(A) There is a substitution of a new corporate member or members that transfers the control of, responsibility for, or governance of the nonprofit corporation; or

(B) There is a 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.

(4) Written notice to, and the written consent of, the Attorney General shall not be required under section 999.5 of these regulations if the agreement or transaction is in the usual and regular course of the activities of the nonprofit corporation.

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(5) Written notice to, and the written consent of, the Attorney General shall not be required under section 999.5 of these regulations if the Attorney General has given the nonprofit corporation a written waiver of the proposed agreement or transaction.

(A) A corporation may request such a waiver by submitting, in writing, a description of the proposed agreement or transaction, a copy of all documents that effectuate any part of the proposed transaction, a description of the proposed use by the nonprofit corporation of any sales proceeds, and an explanation of why the waiver should be granted.

(B) The Attorney General shall grant or deny such request within thirty (30) days after all of the information needed to evaluate the waiver request has been submitted to the Attorney General. In determining whether to grant a waiver, the Attorney General shall consider whether any of the decisional factors set forth in *Corporations Code sections 5917 and 5923* are applicable to the proposed agreement or transaction. A waiver shall be denied if any of these decisional factors require full Attorney General review of the proposed agreement or transaction. The Attorney General may condition the grant of a waiver in a manner that eliminates the need for full Attorney General review.

(C) Copies of the waiver request and the Attorney General's decision to grant or deny the waiver shall be made available to any person upon request, including any person who has previously requested such notice in writing.

(6) Section 999.5(a)(1) of these regulations shall apply to any foreign nonprofit corporation that operates or controls a health facility or a facility that provides similar health care.

(7) Section 999.5(a)(1) of these regulations shall not apply to any agreement or transaction described in *Corporations Code section 5920* if, prior to the proposed agreement or transaction, the other party to the agreement or transaction is an "affiliate," as defined in *Corporations Code section 5031*, of the transferring nonprofit corporation or entity, and the transferring corporation or entity provides the Attorney General with twenty (20) days advance notice of the agreement or transaction.

(8) Written notice to, and the written consent of, the Attorney General shall not be required under section 999.5 of these regulations unless the agreement or transaction involves a health facility or facility that provides similar care that is located within California.

(9) If a nonprofit corporation has engaged in multiple agreements or transactions, in a manner designed to avoid Attorney General review under section 999.5 of these regulations, all of the multiple agreements or transactions shall be considered and analyzed as a single transaction for any purpose under these regulations.

(b) Definitions

(1) "Applicant" means any corporation or entity that is required by section 999.5(a)(1) of these regulations to submit written notice to the Attorney General.

(2) "Entity" means any form of business enterprise other than a corporation.

(3) The phrase "facility that provides similar health care" means any facility operated in California whose primary purpose is to provide medical services to patients requiring admission for more than 24 hours and that is otherwise similar in nature to the type of facilities defined in the provisions of *Health and Safety Code section 1250*.

(4) "Health facility" means any facility located in California that satisfies the definition of health facility set forth in *section 1250 of the Health and Safety Code*.

(5) "Potential transferee" means any corporation or entity with which an applicant has engaged in discussions, or from which an applicant has received a written proposal, concerning a possible agreement or transaction for which written notice is required by section 999.5(a)(1) of these regulations if such discussions or written proposal occurred within the twelve (12) months preceding the decision to transfer assets or control to a transferee.

(6) "Transferee" means any corporation or entity that is the recipient of assets or control through any transaction or agreement for which written notice to the Attorney General is required by section 999.5(a)(1) of these regulations.

(c) Notice and Availability of Information

(1) The applicant shall submit five copies of the notice to the Attorney General to any location set forth in section 999.1(a) of these regulations. The notice shall contain the information required by section 999.5(d) of these regulations and such additional information that the applicant believes is necessary for the Attorney General to review.

(2) The Attorney General may request an applicant to provide such additional information as the Attorney General deems reasonably necessary to decide whether to consent to, give conditional consent to or not to consent to a proposed agreement or transaction under *Corporations Code sections 5915 and 5921*. As set forth in *Corporations Code sections 5917(g) and 5923(d)*, failure to provide the Attorney General with sufficient information and data to evaluate adequately the proposed agreement or transaction or the effects thereof on the public may be grounds for denying consent.

(3) All of the information provided to the Attorney General by the applicant shall be treated as a public record unless such information is a trade secret or unless the public interest in maintaining the confidentiality of that information clearly outweighs the public interest in disclosure.

(A) The applicant shall have the sole burden of designating, at the time of its submission, any specific information that it believes should be treated as confidential and the reasons therefor. The Attorney General shall determine the validity of the confidentiality claim and communicate that determination to the applicant prior to any public disclosure of the information.

(B) The public disclosure provisions of section 999.5(c)(4) of these regulations shall not apply to information determined to be confidential.

(C) If the applicant designates any of the information in the notice as confidential, five additional copies of the notice shall be submitted to the Attorney General with the confidential information identified and redacted.

(4) Every applicant shall maintain a copy of the notice and any additional information submitted by the applicant to the Attorney General in an appropriate reading room in the community being affected by the agreement or transaction for review by the public during normal business hours. The applicant shall publicize the location at which the documents are available for review. Upon written request, the Attorney General shall make available without cost the notice and any additional information provided to the Attorney General to members of the public in written form as soon as practicable after its receipt.

(5) The applicant shall provide to the Attorney General a CD-ROM in PDF format containing the information submitted to the Attorney General under section 999.5(c)(1) and (c)(2) of these regulations. The CD-ROM shall not include any information designated as confidential or any signatures appearing on documents.

(d) Contents of Notice

(1) The written notice of any proposed agreement or transaction set forth in section 999.5(a)(1) of these regulations shall include a section entitled "Description of the Transaction" that contains the following information:

(A) A full description of the proposed agreement and transaction.

(B) A complete copy of all proposed written agreements or contracts to be entered into by the applicant and the transferee that relate to or effectuate any part of the proposed transaction.

(C) A statement of all of the reasons the board of directors of applicant believes that the proposed agreement or transaction is either necessary or desirable.

(2) The written notice of any proposed agreement or transaction set forth in section 999.5(a)(1) of these regulations shall include a section entitled "Fair Market Value" that contains the following information:

(A) The estimated market value of all cash, property, stock, notes, assumption or forgiveness of debt, and any other thing of value that the applicant would receive for each health facility covered by the proposed agreement or transaction.

(B) The estimated market value of each health facility or other asset to be sold or transferred by the applicant under the proposed agreement or transaction.

(C) A description of the methods used by the applicant to determine the market value of any assets involved in the proposed agreement or transaction. This description shall include a description of the efforts made by the applicant to sell or transfer each health facility that is the subject of the proposed agreement or transaction.

(D) Reports, analysis, Requests for Proposal, and any other documents that refer or relate to the valuation of any asset involved in the agreement or transaction.

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(E) For joint venture transactions, all asset contribution agreements and related valuations, all limited liability corporation or limited liability partnership operating agreements, management contracts, and put option agreements.

(3) The written notice of any proposed agreement or transaction set forth in section 999.5(a)(1) of these regulations shall include a section entitled "Inurement and Self-Dealing" that contains the following information:

(A) Copies of any documents or writings of any kind that relate or refer to any personal financial benefit that a proposed affiliation between applicant and the transferee would confer on any officer, director, employee, doctor, medical group or other entity affiliated with applicant or any family member of any such person as identified in *Corporations Code section 5227(b)(2)*.

(B) The identity of each and every officer, trustee or director of applicant (or any family member of such persons as identified in *Corporations Code section 5227(b)(2)*) or any affiliate of applicant who or which has any personal financial interest in any company, firm, partnership, or business entity (other than salary and directors/trustees' fees) currently doing business with applicant, any affiliate of applicant, or the transferee or any affiliate of the transferee.

(C) A statement describing how the board of directors of the nonprofit corporations involved in the transaction are complying with the provisions of *Health and Safety Code sections 1260 and 1260.1*.

(4) The written notice of any proposed agreement or transaction set forth in section 999.5(a)(1) of these regulations that will result in the nonprofit corporation receiving sales proceeds shall include a section entitled "Charitable Use of Assets" that contains the following information:

(A) The applicant's articles of incorporation and all amendments thereto and current bylaws, any charitable trust restrictions, and any other information necessary to define the charitable trust purpose of the applicant's assets.

(B) Applicant's plan for use of the net proceeds after the close of the proposed transaction together with a statement explaining how the proposed plan is as consistent as possible with existing charitable purposes and complies with all applicable charitable trusts that govern use of applicant's assets. The plan must include any proposed amendments to the articles of incorporation or bylaws of the applicant or any entity related to the applicant that will control any of the proceeds from the proposed transfer.

(5) The written notice of any proposed agreement or transaction set forth in section 999.5(a)(1) of these regulations shall include a section entitled "Impacts on Health Care Services" that contains the following information:

(A) A copy of the two most recent "community needs assessments" prepared by applicant for any health facility that is the subject of the agreement; or transaction.

(B) A description of all charity care provided in the last five years by each health facility that is the subject of the agreement or transaction. This description shall include annual total charity care spending; inpatient, outpatient and emergency room charity care spending; a description of how the amount of charity care spending was calculated; annual charity care inpatient discharges, outpatient visits, and emergency visits; a description of the types of charity care services provided annually; and a description of the policies, procedures, and eligibility requirements for the provision of charity care.

(C) A description of all services provided by each health facility that is the subject of the agreement or transaction in the past five years to Medi-Cal patients, county indigent patients, and any other class of patients. This description shall include but not be limited to the type and volume of services provided, the payors for the services provided, the demographic characteristics of and zip code data for the patients served by the health facility, and the costs and revenues for the services provided.

(D) A description of any community benefit program provided by the health facility during the past five years with an annual cost of at least \$ 10,000.

(E) For each health facility that is the subject of the agreement or transaction, a description of current policies and procedures on staffing for patient care areas; employee input on health quality and staffing issues; and employee wages, salaries, benefits, working conditions and employment protections. Such description shall include a list of all existing staffing plans, policy and procedure manuals, employee handbooks, collective bargaining agreements or similar employment-related documents.

(F) For each health facility that is the subject of the agreement or transaction, all existing documents setting forth any guarantees made by any entity that would be taking over operation or control of the health facility relating to em-

ployee job security and retraining, or the continuation of current staffing levels and policies, employee wages, salaries, benefits, working conditions and employment protections.

(G) A statement describing all material effects that the proposed agreement or transaction may have on delivery of health care services to the communities served by each facility proposed to be transferred, and a statement of how the proposed transaction will affect the availability and accessibility of health care in the affected communities.

(H) A description of each measure proposed by the applicant to mitigate or eliminate any significant adverse effect on the availability or accessibility of health care services to the affected community that may result from the agreement or transaction.

If any of the quantitative information required by subsections (B) and (C) is not available, the applicant shall so indicate and provide a reasonable estimate.

(6) The written notice of any proposed agreement or transaction set forth in section 999.5(a)(1) of these regulations shall include a section entitled "Possible Effect on Competition" that contains the following information:

(A) For any agreement or transaction for which a Premerger Notification and Report Form is required to be submitted to the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, a brief analysis of the possible effect of any proposed merger or acquisition of each health care facility that is the subject of the agreement or transaction on competition and market share in any relevant product or geographic market.

(B) The applicant shall provide the Premerger Notification and Report Form and any attachments thereto as filed with the Federal Trade Commission pursuant to the Hart-Scott-Rodino Antitrust Improvement Act of 1976 and 16 C.F.R. Parts 801-803. The procedure for designating information as confidential set forth in section 999.5(c)(3) of these regulations shall apply to any information submitted under this subsection.

(7) The written notice of any proposed agreement or transaction set forth in section 999.5(a)(1) of these regulations shall include a section entitled "Other Public Interest Factors" that contains any other information the applicant believes the Attorney General should consider in deciding whether the proposed agreement or transaction is in the public interest.

(8) The written notice of any proposed agreement or transaction set forth in section 999.5(a)(1) shall include a resolution of the board of directors of the applicant authorizing the filing of the written notice and a statement by the chair of the board that the contents of the written notice are true, accurate and complete.

(9) The written notice of any proposed agreement or transaction set forth in section 999.5(a)(1) shall include a list of the officers and directors of the transferee and the most recent audited financial statement for the transferee.

(10) The written notice of any proposed agreement or transaction set forth in section 999.5(a)(1) shall include a description of the applicant's efforts to inform local governmental entities, professional staff and employees of the health facility, and the general public of the proposed transaction. This description shall include any comments or reaction to this effort.

(11) The written notice of any proposed agreement or transaction set forth in section 999.5(a)(1) of these regulations shall include the following attachments if they are available and if they are not included in another section of the written notice:

(A) Any board minutes or other documents relating or referring to consideration by the board of directors of the applicant and any related entity, or any committee thereof of the agreement or transaction or of any other possible transaction involving any of the health facilities that are the subject of agreement or transaction.

(B) Copies of all documents relating or referring to the reasons why any potential transferee was excluded from further consideration as a potential transferee for any of the health facilities that are the subject of the agreement or transaction.

(C) Copies of all Requests for Proposal sent to any potential transferee, and all responses received thereto.

(D) All documents reflecting the deliberative process used by the applicant and any related entity in selecting the transferee as the entity to participate in the proposed agreement or transaction.

(E) Copies of each Proposal received by the applicant from any potential transferee suggesting the terms of a potential transfer of applicant's health facilities, and any analysis of each such Proposal.

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(F) The applicant's prior two annual audited financial statements, the applicant's most current unaudited financial statement, business projection data and current capital asset valuation data.

(G) Any requests for opinions to the Internal Revenue Service for rulings attendant to this transaction and any Internal Revenue Service responses thereto.

(H) Pro forma post-transaction balance sheet for the surviving or successor nonprofit corporation.

(e) Procedure for Review of Notice

(1) Within 60 days of receipt of the notice as set forth in section 999.5(c)(1) of these Regulations, the Attorney General shall notify the applicant in writing of its decision to consent to, give conditional consent to, or not consent to the agreement or transaction. A copy of the written decision shall be made available to any person or entity who has requested a copy.

(A) For purposes of this section, the notice shall be deemed received on the date when substantially all of the information required by section 999.5(d) of these regulations has been submitted to the Attorney General.

(B) If an independent health care impact statement is required for the agreement or transaction under section 999.5(e)(5), the notice shall not be deemed received until all of the information required by section 999.5(d)(5) has been submitted to the Attorney General.

(2) The Attorney General may extend the 60-day deadline for a decision by an additional 45-day period for the reasons set forth in *Corporations Code sections 5915 and 5921*. Nothing in this section shall preclude the Attorney General and the applicant from mutually agreeing to a further extension of the deadline.

(3) Prior to issuing a written decision, the Attorney General shall conduct one or more public meetings on the proposed agreement and transaction to receive comments from interested parties. At least one of the public meetings shall be in the county in which any health or similar facility that is affected by the agreement or transaction is located.

(A) At least 14 days prior to the public meeting, the Attorney General shall provide notice of the time and place of the meeting to the board of supervisors of the affected county, to any person who has requested such notice in writing, and through publication in a newspaper of general circulation in the affected community.

(B) Nothing in this section shall preclude the Attorney General from holding additional public hearings as necessary to ensure full consideration of the proposed agreement or transaction. Nothing in this section shall preclude the applicant or any other party from holding public meetings to discuss the proposed agreement or transaction.

(C) If a substantive change in the proposed agreement or transaction is submitted to the Attorney General after the initial public meeting, the Attorney General shall conduct an additional public meeting if it is deemed necessary to ensure adequate public comment regarding the proposed change.

(D) If an independent health care impact statement is prepared for the agreement or transaction under section 999.5(e)(5), a public meeting shall be held no earlier than 10 days after the completed statement has been made available for public review.

(4) Within the time periods set forth in this section and relating to the factors set forth in section 999.5(f), the Attorney General may contract with experts or consultants to review any aspect of the proposed agreement or transaction or receive information or expert opinion from any state agency. The Attorney General shall make publicly available any written report from any such expert, consultant, or state agency.

(5) The Attorney General shall prepare an independent health care impact statement for any agreement or transaction that satisfies either of the following conditions:

(A) The agreement or transaction directly affects a general acute care hospital as defined in *Health and Safety Code section 1250(a)* that has more than 50 acute care beds; or

(B) There is a fair argument that the agreement or transaction may result in a significant effect on the availability or accessibility of existing health care services.

Nothing in this section shall preclude the Attorney General from preparing an independent health care impact statement or any other report that may be necessary for a complete review and evaluation of the agreement or transaction.

(6) The independent health care impact statement shall contain the following information:

(A) An assessment of the effect of the agreement or transaction on emergency services, reproductive health services and any other health care services that the hospital is providing.

(B) An assessment of the effect of the agreement or transaction on the level and type of charity care that the hospital has historically provided.

(C) An assessment of the effect of the agreement or transaction on the provision of health care services to Medi-Cal patients, county indigent patients, and any other class of patients.

(D) An assessment of the effect of the agreement or transaction on any significant community benefit program that the hospital has historically funded or operated.

(E) An assessment of the effect of the agreement or transaction on staffing for patient care areas as it may affect availability of care, on the likely retention of employees as it may affect continuity of care, and on the rights of employees to provide input on health quality and staffing issues.

(F) An assessment of the effectiveness of any mitigation measure proposed by the applicant to reduce any significant adverse effect on health care services identified in the impact statement.

(G) A discussion of alternatives to the proposed agreement or transaction including closure of the hospital.

(H) Recommendations for additional feasible mitigation measures that would reduce or eliminate any significant adverse effect on health care services identified in the impact statement.

The information contained in the independent health care impact statement shall be used in considering whether the agreement or transaction may create a significant effect on the availability or accessibility of health care services as set forth in section 999.5(f)(8) of the regulations. Copies of the health care impact statement shall be made available to any person or entity that has requested a copy.

(7) It is the policy of the Attorney General to receive and consider all relevant information concerning the proposed agreement or transaction. Any interested person may submit written comments, or electronic mail if feasible, regarding any aspect of the proposed agreement or transaction. The written comments shall be addressed to the Attorney General, Charitable Trusts Section, 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550, Attn: Hospital Conversion. Written comments should be submitted no later than 10 days before the applicable deadline for the decision.

(f) Factors To Be Considered in Making a Decision

(1) In making a determination on whether to consent to any agreement or transaction for which written consent is required by section 999.5(a)(1) of these regulations, the Attorney General shall consider whether the terms and conditions of the agreement or transaction are fair and reasonable to the selling nonprofit corporation.

(2) In making a determination on whether to consent to any agreement or transaction for which written consent is required by section 999.5(a)(1) of these regulations, the Attorney General shall consider whether the agreement or transaction will result in inurement to any private person or entity.

(A) As used in this subsection, "inurement" means that an individual or entity has received some special benefit which is unreasonable under the circumstances because of his, her or its relationship to any nonprofit corporation involved in the transaction. "Inurement" also includes excessive compensation to directors, officers or employees of any nonprofit corporation involved in the transaction.

(B) In determining whether the agreement or transaction will result in inurement, the Attorney General shall assess, among other things, whether any officer, director, employee, or spouse or family member as described in *Corporations Code section 5227(b)(2)* of an officer or director of any nonprofit corporation involved in the agreement or transaction will receive stock options, performance bonuses, increased compensation, excessive salaries and benefits, or corporate loans as a result of the agreement or transaction.

(C) An agreement or transaction will result in inurement if there is a violation of *Health and Safety Code sections 1260 and 1260.1*.

(3) In making a determination on whether to consent to any agreement or transaction for which written consent is required by section 999.5(a)(1) of these regulations, the Attorney General shall consider the fair market value of the agreement or transaction as the term "fair market value" is defined in *Corporations Code sections 5917(c) and 5923(c)*.

(A) The Attorney General may review some or all of the following factors to determine the fair market value of the agreement or transaction:

1. The fair market value of tangible and intangible assets proposed to be sold or transferred by the applicant in the transaction;
2. Anticipated future earnings or other income from the facilities and other assets being sold or transferred;
3. The fair market value of tangible and intangible assets proposed to be received by the applicant in the transaction;
4. If the nonprofit corporation is receiving notes rather than cash for the sale or transfer of a health facility or other assets, such factors as the type and value of any security or collateral, the present value of the note, the marketability of the note, and tax consequences may be evaluated in determining the value of the note;
5. Whether the facilities or assets being sold or transferred have been aggressively marketed by investment bankers or other relevant professionals in an attempt to generate multiple bidders and maximum value;
6. Whether there are competing offers;
7. Whether formal and professional valuation appraisals have been obtained;
8. Whether the nonprofit corporation thoroughly considered all realistic alternatives, including mergers and/or strategic alliances with other nonprofit entities (both locally and regionally based) and transaction alternatives (e.g., sales of assets, leases, joint ventures, etc.) with for-profit partners; and
9. If an applicant has filed for protection under the United States Bankruptcy Code, the extent to which the bankruptcy court proceeding will set a fair market value for the assets involved in the transaction.

(B) If written notice and consent is required by the provisions of *Corporations Code section 5914*, the Attorney General shall also consider whether the agreement or transaction is at fair market value. This requirement shall not apply if the written notice and consent is required by the provisions of *Corporations Code section 5920*.

(4) In making a determination on whether to consent to any agreement or transaction for which written consent is required by section 999.5(a)(1) of these regulations, the Attorney General shall consider whether the market value has been manipulated by the parties to the agreement or transaction in a manner that causes the value of the assets to decrease

(5) In making a determination on whether to consent to any agreement or transaction for which written consent is required by section 999.5(a)(1) of these regulations, the Attorney General shall consider whether 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 affiliated nonprofit health system.

(A) If the agreement or transaction involves the sale of any charitable trust assets, the nonprofit corporation that receives the sale proceeds shall utilize those proceeds for a like charitable purpose benefitting the same class of beneficiaries. If the charitable trust assets that are sold or transferred involve restricted funds, the proceeds received must remain segregated and used for their restricted purposes.

(B) If the agreement or transaction will result in a redirection of charitable trust assets from an operational use to a grant-making use, every effort shall be made to insure that a constancy of purpose is maintained. A court-validating procedure will be required for any transaction described in this subsection.

(6) In making a determination on whether to consent to any agreement or transaction for which written consent is required by section 999.5(a)(1) of these regulations, the Attorney General shall consider whether the agreement or transaction involves or constitutes any breach of trust.

(7) In making a determination on whether to consent to any agreement or transaction for which written consent is required by section 999.5(a)(1) of these regulations, the Attorney General shall consider whether sufficient information

and data has been provided by the applicant to evaluate adequately the agreement or transaction or the effects thereof on the public.

(8) In making a determination on whether to consent to any agreement or transaction for which written consent is required by section 999.5(a)(1) of these regulations, the Attorney General shall consider whether the agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community.

(A) Potential adverse effects on availability or accessibility of health care may be mitigated through provisions negotiated between the parties to the transaction, through conditions adopted by the Attorney General in consenting to the proposed transaction, or through any other appropriate means.

(B) It is the policy of the Attorney General, in consenting to an agreement or transaction involving a general acute care hospital, to require for a period of at least five years that a minimum level of annual charity care costs be incurred by the hospitals that are the subject of the agreement or transaction. The minimum level of annual charity care costs should be based on the historic level of charity care that the hospital has provided. The definition and methodology for calculating charity care costs should be consistent with the definitions and methodology established by the Office of Statewide Health Planning and Development. The Attorney General shall retain complete discretion to determine whether this policy shall be applied in any specific transaction under review.

(C) It is the policy of the Attorney General, in consenting to an agreement or transaction involving a general acute care hospital, to require for a period of at least five years the continuation at the hospital of existing levels of essential healthcare services, including but not limited to emergency room services. The Attorney General shall retain complete discretion to determine whether this policy shall be applied in any specific transaction under review.

(9) In making a determination on whether to consent to any agreement or transaction for which written consent is required by section 999.5(a)(1) of these regulations, the Attorney General shall consider whether the effect of the agreement or transaction may be substantially to lessen competition or tend to create a monopoly.

(10) In making a determination on whether to consent to any agreement or transaction for which written consent is required by section 999.5(a)(1) of these regulations, the Attorney General shall consider the extent of independence that the nonprofit corporation retains as a result of the agreement or transaction.

(A) The Attorney General will closely scrutinize any agreement or transaction in which the sale proceeds to the nonprofit corporation are tied to the provision of services by the acquiring for-profit entity such as providing health services to the poor in lieu of cash or guaranteed payments by the nonprofit corporation to the acquiring entity for indigent services.

(B) Acquiring for-profit entities shall not control sale proceeds or assets through such methods as creation of a new nonprofit foundation or through appointments to the board of directors of the nonprofit corporations.

(11) Except for transactions set forth in *Corporations Code section 5233(b)*, the Attorney General shall not consent to any agreement or transaction to which one or more directors of any nonprofit corporation involved in the agreement or transaction has a material financial interest unless the facts set forth in *Corporations Code; section 5233(d)(2) or (d)(3)* are established.

(12) In making a determination on whether to consent to any agreement or transaction for which written consent is required by section 999.5(a)(1) of these regulations, the Attorney General shall consider whether the agreement or transaction is in the public interest.

(13) As provided by *Corporations Code section 5917.5*, the Attorney General shall not consent to any agreement or transaction in which the seller restricts the type or level of medical services that may be provided at the health facility that is the subject of the agreement or transaction.

(g) Compliance Program

(1) The Attorney General shall monitor compliance with any terms or conditions of any agreement or transaction for which the Attorney General has given written consent or conditional consent under *Corporations Code sections 5915 and 5921*. Upon request of the Attorney General, parties to any such agreement or transaction shall provide to the Attorney General such information as is reasonably necessary to monitor compliance.

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(2) The Attorney General may contract with experts and consultants as reasonable and necessary to review and evaluate compliance as provided in section 999.5(g)(1) of these regulations.

(3) For any agreement or transaction for which the Attorney General has given written consent or conditional consent under *Corporations Code section 5915*, the Attorney General shall be entitled to reimbursement of all actual, reasonable and direct costs, including contract and administrative costs, incurred in monitoring compliance as provided in section 999.5(g)(1) of these regulations.

(4) For any agreement or transaction for which the Attorney General has given written consent or conditional consent under *Corporations Code section 5921* and for a period not to exceed two years after the end of the time period for performance of any obligation specified by the agreement or transaction, the Attorney General shall be entitled to reimbursement of all actual, reasonable and direct costs, including contract and administrative costs, incurred in monitoring compliance as provided in section 999.5(g)(1) of these regulations.

(5) Except as otherwise prohibited by law or as necessary to protect privileged communications, the Attorney General shall make available to the public all documents relating to compliance with any terms or conditions of any agreement or transaction for which the Attorney General has given consent or conditional consent under *Corporations Code section 5915* and *5921*.

(h) Amendment of Consent Terms and Conditions

(1) Either the selling or acquiring corporation or entity, or their successors in interest, may request Attorney General approval of any amendment of the terms and conditions of any agreement or transaction for which the Attorney General has given consent or conditional consent under *Corporations Code section 5915* or *5921*. The sole basis for such a request shall be a change in circumstances that could not have reasonably been foreseen at the time of the Attorney General's action.

(2) A request for an amendment shall include a description of each proposed amendment, a description of the change in circumstance requiring each such amendment, a description of how each such amendment is consistent with the Attorney General's consent or conditional consent to the transaction, and a description of the efforts of the entity making the request to avoid the need for amendment.

(3) The Attorney General shall issue a decision on the proposed amendments within 90 days of the submission of all of the information set forth in section 999.5(h)(2) of these regulations. The Attorney General shall provide public notice of the proposed amendments. A public meeting shall be held before the decision is made either at the discretion of the Attorney General or upon the request of any person within 7 days of the public notice.

(4) In approving proposed amendments to conditions relating to the operation of a health facility such as required levels of charity care and continuation of essential services, the Attorney General shall consider the effect of the proposed amendments on the availability or accessibility of health care services to the affected community. The Attorney General shall approve proposed amendments of the use of sales proceeds only if the proposed amendments are necessary to carry out charitable trust purposes, or in the case of a proposed change in charitable purpose only if that change complies with the principles of the cy pres doctrine.

(5) The provisions of section 999.5(g)(2), (3), (4) and (5) shall apply to Attorney General review of proposed amendments of the terms and conditions of any agreement or transaction for which the Attorney General has given consent or conditional consent under *Corporations Code section 5915* and *5921*.

(6) Unless otherwise provided in the decision consenting to an agreement or transaction, the approval of the Attorney General shall not be required for modifications to the agreement or transaction that are not material to the Attorney General's consent. The provisions of section 999.5(h) shall not limit the authority of the Attorney General to interpret the terms and conditions of any consent decision.

(i) Attorney General Cost Reimbursements

(1) The applicant shall reimburse the Attorney General for the following costs incurred in the review and evaluation of any written notice submitted under section 999.5(a) of these regulations:

(A) All actual contract costs that are reasonable and necessary to conduct the review and evaluation, and

(B) All actual, reasonable, direct costs, including administrative costs, incurred in reviewing, evaluating, and ruling upon the written notice.

11 CCR 999.5

(2) The Attorney General shall also be entitled to reimbursement for the costs set forth in sections 999.5(g)(2), (3) and (4) and section 999.5(h)(5) of these regulations. Such reimbursement shall be provided by either the selling or the acquiring corporation, depending upon which one the burden of compliance falls or which one submitted the proposed amendment.

(3) As used in sections 999.5(g)(3) and (4), and 999.5(i)(1)(B) of these regulations, "actual, reasonable and administrative costs" includes, but is not limited to, the cost for all Attorney General's office personnel and employee time at the billing rates used by the Department of Justice for budgeting purposes, costs of travel, printing costs, and all costs incurred in the noticing and conduct of public meetings.

(4) The Attorney General shall maintain an adequate record of any reimbursable costs, which shall, upon request, be made available to the party from whom reimbursement is being sought.

AUTHORITY:

Note: Authority cited: *Sections 5914(b), 5918, 5920(b), 5924(d) and 5925, Corporations Code*. Reference: *Sections 5914-5925, Corporations Code*.

HISTORY:

1. New section filed 1-17-97 as an emergency; operative 1-17-97 (Register 97, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-19-97 or emergency language will be repealed by operation of on the following day.

2. Certificate of Compliance as to 1-17-97 order, including amendment, transmitted to OAL 5-7-97 and filed 6-19-97 (Register 97, No. 25).

3. New subsections (e)-(e)(3)(G)(iii) filed 8-14-97 as an emergency; operative 8-14-97 (Register 97, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-12-97 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 8-14-97 order, including amendments, transmitted to OAL 11-25-97 and filed 1-12-98 (Register 98, No. 3).

5. Repealer and new section filed 2-4-2000 as an emergency; operative 2-4-2000 (Register 2000, No. 5). A Certificate of Compliance must be transmitted to OAL by 6-5-2000 or emergency language will be repealed by operation of law on the following day.

6. Amendment of subsection (a)(3) and new subsections (a)(3)(A) and (a)(3)(B) filed 3-16-2000 as an emergency; operative 3-16-2000 (Register 2000, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-14-2000 or emergency language will be repealed by operation of law on the following day.

7. Repealer and new section contained in 2-4-2000 order and amendment of subsection (a)(3) and new subsections (a)(3)(A) and (a)(3)(B) contained in 3-16-2000 order refiled 6-5-2000 as an emergency; operative 6-5-2000 (Register 2000, No. 23). A Certificate of Compliance must be transmitted to OAL by 10-3-2000 or emergency language of both orders will be repealed by operation of law on the following day.

8. Repealer and new section contained in 2-4-2000 order and amendment of subsection (a)(3) and new subsections (a)(3)(A) and (a)(3)(B) contained in 3-16-2000 order refiled 10-2-2000 as an emergency; operative 10-2-2000 (Register 2000, No. 40). A Certificate of Compliance must be transmitted to OAL by 1-30-2001 or emergency language will be repealed by operation of law on the following day.

9. Repealer and new section contained in 2-4-2000 order and amendment of subsection (a)(3) and new subsections (a)(3)(A) and (a)(3)(B) contained in 3-16-2000 order refiled 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 1-30-2001 orders, including further amendment of section, transmitted to OAL 3-9-2001 and filed 4-20-2001; operative 5-20-2001 (Register 2001, No. 16).

11. Amendment of section and Note filed 2-16-2005; operative 3-18-2005 (Register 2005, No. 7).

NOTES:

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TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 15. ATTORNEY GENERAL REGULATIONS UNDER NONPROFIT CORPORATION LAW

11 CCR 999.6 (2013)

§ 999.6. Charitable Entity Registration Refusal, Revocation or Suspension

(a) The Attorney General may refuse to register, or revoke, or suspend the registration of a charitable corporation, trustee, commercial fundraiser, fundraising counsel, and coventurer, for the reasons as specified in Section 12598, subdivision (e), of the Government Code.

(b) When a registration is refused, revoked, or suspended, the Attorney General shall provide written notice which specifies the reasons for the action.

(c) If the registrant seeks to appeal a registration action, it must request a hearing by filing a written appeal with the Registrar of Charitable Trusts within thirty (30) calendar days of the written notice's issue date.

(1) The written appeal shall contain the name and entity affiliation (if any), address and phone number of the person appealing, the registration number (if any), and a statement of the basis of appeal.

(2) Notice of the hearing date, time and place shall be provided in accordance with the procedures set out in Chapter 5 (commencing with *section 11500*) of *Part 1 of Division 3 of Title 2 of the Government Code*. The failure of the person or entity who has appealed to appear at the time and place of the hearing shall be deemed a withdrawal of the appeal, and the written notice of the registration refusal, revocation, or suspension shall constitute the Attorney General's final order subject to no further administrative review.

(d) All hearings provided for under this regulation shall be conducted by an administrative hearing officer appointed by the Attorney General. The hearing officer shall not have participated in the decision concerning the registration that is the subject of the hearing and is otherwise subject to the disqualification provisions of *sections 11425.30 and 11425.40 of the Government Code*.

(e) All hearings under this regulation shall be conducted in accordance with the procedures set out in Chapter 5 (commencing with *section 11500*) of *Part 1 of Division 3 of Title 2 of the Government Code*, except where as applicable those provisions requiring the designation of administrative law judges.

(f) Except as otherwise prohibited by law, the Attorney General may delegate any of the powers and duties under Section 12598, subdivision (e), of the Government Code and under these regulations to Department of Justice staff.

AUTHORITY:

Note: Authority cited: *Section 12598(e), Government Code*. Reference: *Sections 11400, et seq. and 11500, et seq., Government Code*.

HISTORY:

1. New section filed 6-1-2007; operative 7-1-2007 (Register 2007, No. 22).

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TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 15. ATTORNEY GENERAL REGULATIONS UNDER NONPROFIT CORPORATION LAW

11 CCR 999.7 (2013)

§ 999.7. Review of Hearing Officer's Proposed Decision

(a) Within 15 days after service of the hearing officer's proposed decision as provided for in Chapter 5 (commencing with *section 11500*) of *Part 1 of Division 3 of Title 2 of the Government Code*, any party to a registration action may file a written brief served on all parties seeking review by the Attorney General of the proposed decision. Failure of a party to timely file such a brief waives the party's right to such a review.

(b) Briefing Procedure

(1) No later than 15 days after service of the written brief requesting review of the proposed decision, an opposition to the request (if any) must be filed and served on the parties.

(2) The parties' briefing may address the following:

(A) Whether the facts stated in the proposed decision are consistent with the evidence presented;

(B) Whether the proposed decision contains an accurate statement and/or application of the law; and

(C) Whether additional evidence exists that could not, with reasonable diligence, have been discovered and presented at the administrative hearing.

(3) The Attorney General may in his/her discretion upon a showing of good cause, extend the time requirements set forth herein unless irreparable harm would result from granting such an extension.

AUTHORITY:

Note: Authority cited: *Section 12598(e), Government Code*. Reference: *Sections 11517, 11518.5 and 11519, Government Code*.

HISTORY:

1. New section filed 6-1-2007; operative 7-1-2007 (Register 2007, No. 22).

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TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 15. ATTORNEY GENERAL REGULATIONS UNDER NONPROFIT CORPORATION LAW

11 CCR 999.8 (2013)

§ 999.8. Final Attorney General Decisions

(a) Upon completion of the briefing process or after 15 days of service of the proposed decision, the Attorney General may do any of the following:

(1) Adopt the proposed decision in its entirety.

(2) Reduce or otherwise mitigate the proposed decision in its entirety.

(3) Make technical or non-substantive changes which do not affect the factual or legal basis of the proposed decision and adopt it as the final decision.

(4) Non-adopt the proposed decision. If the proposed decision is not adopted, the Attorney General may decide the case upon the record, including the transcript, or may refer the case back to the hearing officer to take additional evidence. If the case is remanded back to the hearing officer for taking additional evidence, another proposed decision shall be prepared based upon this additional evidence. The proposed decision shall be subject to the review and adoption procedures set out in these regulations.

(A) Before deciding any case on the record, the Attorney General shall give the parties the opportunity to present further written argument.

(B) If the record and/or the parties' arguments reveal the need for additional evidence, the Attorney General in his/her discretion may order the taking of additional evidence either by the Attorney General or by the hearing officer. Following the receipt of any additional evidence, the Attorney General may require further written or oral argument before deeming the case submitted for final decision.

(b) The proposed decision shall be deemed adopted by the Attorney General 100 days after service of the proposed decision by the hearing officer, unless within that time: (1) the Attorney General notifies the parties that the proposed decision is or is not adopted or is otherwise modified, or (2) the matter is referred to the hearing officer to take additional evidence.

(c) The decision shall become effective 30 days after it is mailed to the parties, unless reconsideration of the decision is ordered within that time or the Attorney General orders that the decision shall become effective sooner.

(d) The Attorney General may designate as precedent the decision or any part thereof that contains a significant legal or policy determination that is likely to recur.

(1) Once a decision is designated as precedent, parties may cite to such decisions in their briefs to the Attorney General, hearing officer, and the courts.

(2) If the Attorney General decides to designate precedent decisions under this regulation, then an index of significant legal and policy determinations made in these decisions shall be maintained and made available to the public at the Charitable Trust Registry as well as publicized annually in the California Regulatory Notice Register. The index shall be maintained at least annually, unless no precedent decisions have been designated since the last preceding update.

AUTHORITY:

Note: Authority cited: *Section 12598(e), Government Code*. Reference: *Sections 11425.10(a)(7), 11425.60, 11517, 11518.5 and 11519, Government Code*.

HISTORY:

1. New section filed 6-1-2007; operative 7-1-2007 (Register 2007, No. 22).

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