

NOTICE OF PROPOSED ACTION

TITLE 11. DEPARTMENT OF JUSTICE

NOTICE IS HEREBY GIVEN that the Department of Justice (DOJ) proposes to amend as permanent regulations its existing regulations relating to the Attorney General's review of proposed health facility transactions involving nonprofit corporations pursuant to Corporations Code section 5914 et seq.

PUBLIC COMMENT PERIOD

The Department of Justice will accept written comments presenting statements, arguments or contentions relevant to the proposed regulations for a period of 45 days from the date of publication of this Notice of Proposed Action. The DOJ will not consider any comments which are not received by 5 p.m. August 16, 2004. No later than 15 days prior to the close of this written comment period, any interested person or his or her duly authorized representative may make a written request for a public hearing pursuant to Government Code section 11346.8, and a public hearing will be held. Written comments or requests for a public hearing should be addressed to Deputy Attorney General Mark Urban, Department of Justice, Office of the Attorney General, 1300 I Street, 15th floor, Sacramento, California, 94244-2550.

AUTHORITY AND REFERENCE

The proposed regulations amend section 999.5 of title 11 of the California Code of Regulations, pursuant to the authority of Corporations Code sections 5918 and 5925, which specifically authorize the Attorney General to adopt regulations implementing Corporations Code Sections 5914, et seq., and Corporations Code Section 5920, et seq.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior to amendments effective January 1, 2003, Corporations Code sections 5914 - 5924 required any nonprofit corporation that is subject to the Nonprofit Public Benefit Corporation Law and operates or controls a health facility or operates or controls a health facility that provides similar health care, to provide written notice to, and obtain the written consent of, the Attorney General prior to selling or otherwise disposing of a material amount of its assets to a for-profit corporation or entity, a mutual benefit corporation or entity, or another public benefit corporation or entity.

Assembly Bill No. 890 (AB 890), which became effective on January 1, 2003, modified the existing law by making these requirements applicable to any nonprofit corporation that operates or controls a facility that provides similar health care, including religious corporations. The bill also authorized the Attorney General to consider, before consenting to an agreement by a nonprofit corporation to sell or dispose of its assets to another nonprofit corporation, whether the terms and conditions of the agreement or transaction are fair and reasonable to the selling nonprofit corporation, and whether the

agreement or transaction is at a fair market value, as specified. AB 890 amended Corporations Code sections 5914, 5917, 5919, 5920, 5921, 5923, and 5924. (Stats. 2002, ch. 427.)

Senate Bill 932 (SB 932), which took effect on January 1, 2004, adds Corporations Code section 5917.5 to prohibit Attorney General consent to a transaction in which the seller restricts the type or level of medical services that may be provided at the health facility. (Stats. 2003, ch. 65.)

The proposed regulations amend section 999.5 of title 11 of the California Code of Regulations to implement AB 890 and SB 932. Additionally, the current regulations governing Attorney General review of health facility transactions were last amended in January 2001. The Attorney General has reviewed many proposed health facility transactions under the current regulations. This experience has shown that a number of changes in the regulations are necessary to improve the Attorney General's review process and to assist the parties to transactions and interested members of the public.

The proposed regulations include a more detailed description of the process for considering waivers of Attorney General review, changes in document-filing requirements, changes in the methods for determining whether transactions are at fair market value, requirements for maintaining existing levels of charity care and essential hospital services, and establishment of a procedure for amending the terms and conditions of the Attorney General's consent to a transaction.

DISCLOSURES REGARDING THE REGULATIONS

Fiscal Impact on Public Agencies: None.

Mandate and cost to any local agency or school district which must be reimbursed in accordance with Government Code Section 17561: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings to any state agency: None.

Cost or savings in federal funding to the state: None.

Cost impact on private persons or directly affected businesses: The proposed regulations directly affect corporations and entities involved in transactions regarding health facilities that are operated or controlled by a nonprofit corporation. Except as necessary to implement AB 890, which expands the scope of Attorney General health facility transaction review, the proposed regulations do not impose additional costs on nonprofit corporations.

Significant statewide adverse economic effect directly affecting business including the ability of California businesses to compete with businesses in other States: None.

Effect on small businesses: None. Proposed amendments only affect nonprofit corporations that own or operate large health facilities.

Significant effect on housing costs: None.

In accordance with Government Code Section 11346.3, the DOJ has assessed whether and to what extent adoption of the regulations will affect the following:

(a) The creation or elimination of jobs within the State of California: None.

(b) The creation of new businesses or the elimination or expansion of existing businesses with the State of California: None.

STATEMENT OF REASONS AND INFORMATION

DOJ has prepared an initial statement of the reasons for the proposed action and has available all of the information upon which the proposal is based.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

Copies of the exact language of the amendments and additions to the regulations, the initial statement of reasons and other information, if any, may be obtained upon request from the Office of the Attorney General, 1300 I Street, Room 1130, Sacramento, CA 94244-2550, or by telephoning the contact person listed below.

CONTACT PERSON

General or substantive inquiries concerning the regulatory actions should be directed to Deputy Attorney General Mark Urban at the above address or at (916) 324-5347. The backup contact person to whom general inquiries may be directed is Sandy Blazak, Associate Governmental Program Analyst, who may be contacted at the above address or at (916) 327-7882. The backup contact person to whom substantive inquiries may be directed is Supervising Deputy Attorney General Belinda Johns, who may be

contacted at 455 Golden Gate Avenue, Suite 11000, San Francisco, California, 94102-7004 or at (415) 703-1120.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

Interested persons are invited to submit written comments on the adoption of the regulations. A public comment period is provided from July 2, 2004 through August 16, 2004. Filing of written statements will be accepted at the Department of Justice, Office of the Attorney General (Attention: Mark Urban, Deputy Attorney General), 1300 I Street, Room 1130, Sacramento, CA 94244-2550, until the close of business 5:00 p.m. August 16, 2004. The DOJ will not consider written comments received after August 16, 2004.

PROPOSED REVISIONS, FINAL ADOPTION OF REGULATIONS

Following the close of the written comment period, the DOJ may adopt, as final, the regulations as described in this Notice and Informative Digest. Copies of the Regulations, as finally adopted, will be sent to all persons who have requested copies by filing a written request with the contact person identified above. If, as a result of written public comment, significant or substantial changes to the proposed regulations are deemed appropriate, copies of the proposed changes will be sent to all persons who previously requested copies, all persons who submitted written comments during the comment period, and those who have requested copies of information regarding the regulations, at least 15 days prior to the date on which the Department adopts the resulting regulations.

Thereafter, DOJ will accept written comments, arguments and evidence for a period of 15 days after the date upon which changes were made available. If adopted, the regulations will appear in the California Code of Regulations, title 11, division 1, chapter 15, section 999.5.

The DOJ must determine that no reasonable alternative considered by it or that has otherwise been identified or brought to the attention of the DOJ would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF MATERIALS ON THE INTERNET

The Notice of Proposed Action, the Initial Statement of Reasons, the Final Statement of Reasons, the text of the proposed regulations, the date a rulemaking action is filed with the Secretary of State, and the effective date of the rulemaking action will all be posted on, and may be downloaded from, the website of the Charitable Trusts Section of the Office of the Attorney General (<http://ag.ca.gov/charities>).

