



## Ohio Revised Code

### Section 109.34 Notice of transactions by nonprofit health care entity.

Effective: May 7, 1997

Legislation: House Bill 242 - 122nd General Assembly

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(A) As used in this section and in section 109.35 of the Revised Code:

(1) "Fair market value" means the price that the assets being transferred would bring in a competitive and open market under a fair sale with the buyer and seller acting prudently, knowledgeably, and in their own best interest and a reasonable time being allowed for exposure in the market.

(2) "Nonprofit health care entity" means any of the following that was created for any charitable or social welfare purpose related to health care:

(a) A hospital, as defined in section 3727.01 of the Revised Code, that is owned or operated by a corporation organized under Chapter 1702. of the Revised Code or the nonprofit corporation law of another state;

(b) Either of the following that is or has been exempt from taxation under section 501(a) of the Internal Revenue Code:

(i) An entity that is or has been granted a certificate of authority under Chapter 1742. of the Revised Code;

(ii) An entity that is authorized or has been authorized to transact business in this state under Title XXXIX of the Revised Code, that is in the business of providing sickness and accident insurance, and that was previously a hospital service association under former Chapter 1739. of the Revised Code or Chapter 669. of the General Code, has merged or otherwise consolidated with a former hospital service association, or any of whose predecessors in interest has merged or otherwise consolidated with a former hospital service association.

(3) "Party" includes a nonprofit health care entity that is the subject of a transaction or proposed transaction, an acquiring person, and the resulting entity, if any.



(4) "Transaction" means a transfer of ownership or control of assets of a nonprofit health care entity, whether by purchase, merger, consolidation, lease, gift, joint venture, or other transfer, including any binding obligation in furtherance of the transaction, that is equal to at least twenty per cent of the assets of the entity and occurs in the twenty-four-month period prior to the date notice is submitted to the attorney general in accordance with division (B) of this section. "Transaction" also means a transfer of ownership or control of any assets of a nonprofit health care entity, whether by purchase, merger, consolidation, lease, gift, joint venture, or other transfer, including any binding obligation in furtherance of the transaction, if the entity is unable to fulfill its stated or actual purpose without the assets. "Transaction" does not include either of the following:

(a) A transfer of ownership or control of assets of a nonprofit health care entity between nonprofit health care entities and persons exempt from taxation under section 501(a) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 501, as amended;

(b) A transfer of ownership or control of assets of a nonprofit health care entity in relation to which the nonprofit health care entity, prior to the effective date of this section, has entered into a consent decree with the attorney general that requires distribution of the charitable assets of the entity to an appropriate health-related charity. The exemption in division (A)(4)(b) of this section does not limit the authority of the attorney general to seek remedies for breaches of fiduciary duty or other violations of law.

(B) A nonprofit health care entity proposing to enter into a transaction shall provide notice of the proposed transaction to the attorney general and obtain written approval of the transaction in accordance with this section. The nonprofit health care entity shall submit the notice on forms provided by the attorney general, and the notice shall include all of the following:

(1) The names and addresses of the parties, including a list of all individuals who are or have been chosen as directors, officers, or board members of the parties;

(2) The terms of the proposed transaction, including a summary of all contracts or other agreements of the parties;



(3) The amount, source, and nature of consideration to be paid to the nonprofit health care entity, its directors, officers, board members, executives, or experts retained by the nonprofit health care entity.

(4) A statement acknowledging that the nonprofit health care entity is under a continuing duty to notify the attorney general of any changes in the information contained in the notice or other documents required by this section and that a violation of this duty may delay approval of the proposed transaction. The statement shall be signed by a representative of the nonprofit health care entity at the time the notice is submitted to the attorney general.

(C) In addition to the notice described in division (B) of this section, the nonprofit health care entity shall submit all of the following:

(1) Audited financial statements for the nonprofit health care entity for the three fiscal years prior to the date the nonprofit health care entity submitted the notice to the attorney general;

(2) A valuation statement prepared by an independent, qualified expert, including an investment banker, actuary, appraiser, certified public accountant, or other expert, that assesses the full and fair market value of the nonprofit health care entity;

(3) Copies of all contracts and other agreements between the parties or their officers, directors, board members, or other fiduciaries, including any contracts or other final agreements relating to the close of the proposed transaction;

(4) Any additional information the attorney general considers necessary to value the nonprofit health care entity's assets as required in rules adopted by the attorney general in accordance with Chapter 119. of the Revised Code.

(D) The notice and all other documents or materials submitted pursuant to this section are public records provided they meet the definition set forth in section 149.43 of the Revised Code.

(E) Not later than two business days after the discovery of any changes in information contained in the notice or other documents required by this section, the nonprofit health care entity shall provide copies to the attorney general of any documents and other material relevant to the changes. In



addition to the ninety-day extension authorized by division (A) of section 109.35 of the Revised Code, the attorney general for good cause may delay approval of the proposed transaction up to thirty days following receipt of the documents and other material relevant to the changes.

(F) Not later than seven days after submitting the notice and other documents required by this section, the nonprofit health care entity shall publish notice of the proposed transaction in at least one daily newspaper of general circulation in the county where the nonprofit health care entity has its principal place of business. The notice shall state the names of the parties and a description of the proposed transaction.

(G) Notwithstanding division (A)(4)(a) of this section, as used in this division, "nonprofit combination" means a transaction between a nonprofit health care entity and another unrelated nonprofit health care entity.

Not less than sixty days before the closing of a nonprofit combination, a nonprofit health care entity that is a party to the combination and is the party to be acquired shall provide notice of the nonprofit combination to the attorney general by submitting the information described in divisions (B)(1) and (3) of this section.

Not later than seven days after the information required by this section is submitted to the attorney general, each of the nonprofit health care entities that is a party to a nonprofit combination shall publish the notice described in division (F) of this section.