

WAC 246-312-040 Documents required. (1) The acquiring person shall submit as part of the application for approval three copies of the required documents to the Department of Health, Office of Health Systems Development, P.O. Box 47851, Olympia, Washington 98504-7851 and one copy to the Attorney General's Office, Antitrust Section, 900 4th Avenue, Suite 2000, Seattle, Washington 98164-1012. The official date of receipt shall be the date the application is received at the department of health.

(2) Each document submitted shall identify which request the document is responsive to, using the list below. If the requested document does not exist the acquiring party shall note "does not exist" on a page for that document.

(3) The acquiring party shall submit, or, as appropriate, obtain from the nonprofit hospital and then submit:

(a) The articles of incorporation of the nonprofit hospital, including all amendments thereto from inception to the present.

(b) The bylaws of the nonprofit hospital, including all amendments thereto from inception to the present.

(c) All documents reflecting the terms and conditions of any restricted gifts or bequests to the nonprofit hospital in excess of ten thousand dollars.

(d) A list identifying all trustees, officers and directors of the nonprofit hospital who have served at any time during the seven years prior to the application.

(e) A list identifying each and every officer, trustee or director of the nonprofit hospital (or any immediate family member of such persons) or any affiliate of the nonprofit who has any personal financial interest (other than salary and directors/trustees' fees) in any company, firm, partnership, or other business entity that is currently doing business, or has previously done business, with the nonprofit hospital or any affiliate of the nonprofit hospital or the acquiring person or any affiliate of the acquiring person.

(f) A statement summarizing the procedure which the nonprofit hospital's board of directors used to evaluate the proposed acquisition.

(g) All documents reflecting a decision by the board of directors of the nonprofit hospital to delegate to any committee, or group smaller than the entire board, the responsibility for reviewing or considering any potential change of ownership or control of the nonprofit's assets.

(h) All documents relating to discussions, deliberations or consideration by the nonprofit hospital's board of directors or any committee or individual members thereof of any possible change of ownership or control of the hospital's assets including the proposed acquisition and specific alternatives to the proposed acquisition.

(i) An affidavit from each member of the board of directors of the nonprofit hospital which contains a statement that the individual has no conflict of interest in the proposed acquisition or otherwise shall disclose any and all actual or potential individual conflicts of interest.

(j) Copies of the two most recent "community needs assessment" or similar evaluations or assessments prepared by or for the nonprofit hospital. Identify all individuals or entities which assisted or contributed to any such evaluations or assessments.

(k) All documents relating to communications between the nonprofit hospital and any consultants retained to assist in the process of considering or deciding whether to enter into the proposed acquisition

including any valuation of the assets involved in the proposed acquisition, retention letters or contracts, and any and all materials relied upon to support any conclusions as to valuation.

(l) All documents relating to any relationship between the nonprofit hospital and valuation consultant.

(m) The financial and economic analysis and report from an independent consultant relating to the proposed acquisition and the supporting documents which form the basis for this report, and any other documentation reflecting valuation determinations of any of the nonprofit hospital's assets that are subject to the proposed acquisition.

(n) Copies of all requests for proposal sent to any potential acquiring person and all responses received thereto by the nonprofit hospital.

(o) All documents relating to the reasons why any potential acquiring person was excluded by the nonprofit hospital from further consideration as a potential acquiring person of the assets involved in the proposed acquisition.

(p) All documents reflecting the deliberative process used by the nonprofit hospital in selecting the acquiring person.

(q) Copies of each proposal received by the nonprofit hospital and documents which reflect any analysis thereof. Identify all analysts involved.

(r) All documents relating to the nonprofit hospital's board of directors' evaluation of the option of continuing as a nonprofit entity or pursuing the proposed acquisition or similar transaction with another nonprofit entity.

(s) All documents relating to the nonprofit hospital's plan for use of any proceeds after close of the proposed acquisition together with a statement explaining how the proposed plan complies with all applicable charitable trusts that govern use of the nonprofit hospital's assets. The plan must include any proposed amendments to the nonprofit hospital's articles of incorporation and bylaws or any articles of incorporation and bylaws of any entity that will control any of the proceeds from the proposed transfer. Attach any Internal Revenue Service opinions related to the above.

(t) A statement from the nonprofit hospital's board of directors which contains all the reasons for the board's conclusion that the proposed acquisition is necessary or desirable and is appropriate under the circumstances, and which contains the board's conclusions regarding the effects which the proposed acquisition will likely have on delivery of health related services to the community served by each facility involved in the proposed acquisition, and the basis for this opinion. The statement shall also describe all dissenting viewpoints presented.

(u) Copies of the prior five annual audited financial statements and the most current unaudited financial statement for the nonprofit hospital.

(v) A detailed statement of any actual or contingent liabilities retained by the nonprofit hospital posttransaction.

(w) All requests for opinions to the Internal Revenue Service for rulings related to the proposed acquisition and any Internal Revenue Service responses thereto.

(x) A pro forma balance sheet for the surviving or successor nonprofit entity posttransaction.

(y) A statement describing how the survivor or the successor nonprofit entity plans to deal with the right of first refusal to re-

purchase the assets involved in this transaction, along with a copy of any proposed contract, agreement or understanding regarding the same.

(z) A detailed statement describing how representatives of the community will be involved in the governance of the successor nonprofit entity.

(aa) A statement containing any other information the nonprofit hospital believes the attorney general should consider in deciding whether the proposed acquisition is in the public interest.

(bb) All proposed written agreements or contracts between the nonprofit hospital and the acquiring person relating to the proposed acquisition.

(cc) All documents relating to any personal financial benefit that the proposed acquisition may confer on any officer, director, trustee, employee, doctor, medical group, consultant, or any other entity affiliated with the nonprofit hospital or any immediate family member of any such person.

(dd) All documents relating to any relationship between the acquiring person and valuation consultant.

(ee) Copies of any proposed contract, agreement or understanding relating to the proposed acquisition between the acquiring person and any officer, director, trustee, consultant, or committee member of the nonprofit hospital, or consultants thereto, or any other party to the acquisition.

(ff) A detailed statement and all documents relating to the parties' plans to ensure the community's continued access to affordable health care posttransaction and plans regarding any anticipated reduction or elimination of any health services posttransaction and the availability of alternative services should such elimination or reduction occur.

(gg) A detailed statement and all documents relating to the parties' plans for assuring the continuance of existing hospital privileges posttransaction.

(hh) A detailed statement and all documents relating to the parties' plans for ensuring the maintenance of appropriate health science research and health care provider education posttransaction.

(ii) A detailed statement and all documents relating the parties' plans for ensuring safeguards to avoid conflict of interest in post-transaction patient referral.

(jj) A detailed statement and all documents relating to the parties' commitment and plans to provide health care to the disadvantaged, the uninsured, and the underinsured and how benefits to promote improved health in the affected community will be provided posttransaction.

(4) The attorney general and the department of health reserve the right to request additional information and documents as deemed reasonably necessary to determine compliance with chapter 70.45 RCW, the Nonprofit Hospital Sales Act.

[Statutory Authority: Chapter 70.45 RCW and RCW 70.44.007. WSR 98-14-056, § 246-312-040, filed 6/26/98, effective 7/27/98.]