

W7a

Lane
County



March 26, 2003

TO: Board of County Commissioners

FM:  Rob Rockstroh, Director H&HS

RE: Report Back/McKenzie-Willamette Letter to AG

I will be out of the office on April 2 when this item is scheduled to be discussed. McKenzie-Willamette mailed their letter and the Letter of Intent signed with Triad, to the Attorney General.

We have not received a copy of the letter or LOI because the documents were sent to the Attorney General as trade secrets. Please see the attached memo.

Per ORS 65.805 (Nonprofit Corporations), upon a satisfactory showing, any material required to be submitted to the AG is a trade secret under ORS 192.501 (Public Records Law).

We cannot really provide any analysis or comment without seeing the documents. If there are other concerns or issues you have, please let me know.

Attachments

c: Bill VanVactor
Barbara Biedryzcki

Services

The new hospital will provide a 24-hour emergency medical department, and at least 114 licensed acute care beds, and all other services required for a licensed acute care hospital in Oregon.

Ownership of the New Company

- Triad will contribute \$80 million in cash to the new company;
- McKenzie-Willamette will contribute the property, plant, equipment, and working capital associated with the existing hospital to the new company.

The ownership interests in the new company will be equal to the capital contributions of each party. *Note: Once the parties have established a value for McKenzie-Willamette's assets, the Oregon Attorney General will review the valuation to determine if it is fair.*

Purchase Option, Right of First Refusal

McKenzie-Willamette will have the right to buy additional ownership interests in the new company any time, up to a maximum of 49% of the new company. For the first ten years after the new hospital is built, Triad is required to buy McKenzie-Willamette's interest in the new company at fair market value upon the request of McKenzie-Willamette. The transaction also includes a standard "right of refusal" provision as well as an agreement of the part of each party not to compete with the other in Lane County, Oregon.

Board of Directors of the New Company

Both partners will govern the new company equally. The Board will have six members: three appointed by McKenzie-Willamette and three appointed by Triad. The new company will be a for-profit, tax paying company. The new company Board will have the authority to

- approve the hiring of the existing and new hospital CEO,
- approve all budgets for the new company,
- add or discontinue certain medical services,
- evaluate the amount of charity care provided by the new company, and
- make determinations about hospital accreditation.

Both parties want to enable McKenzie-Willamette to retain tax exempt status so it can continue to raise funds to help the hospital achieve its healthcare mission. To ensure this, the three McKenzie-Willamette Hospital members of the Board ***will have the exclusive right to***

- terminate the existing or new hospital CEO,
- name the Board chair,
- require changes to the structure of the new company if it fails to meet the Community Benefit Standards.

Board of Trustees of the Hospital

Twelve members will be appointed to the hospital Board of Trustees: six will be physicians from the hospital's active staff; six will be local community members. The Trustees will

- adopt a vision, mission and value statement for the hospital,
- participate in strategic planning and business decisions,
- monitor performance improvement,
- grant, suspend or terminate medical staff privileges,
- identify service and educational opportunities, and

- have other powers as delegated by the new company Board of Directors.

Operation of the Hospital

Triad will operate the hospital and will offer employment to all active employees of McKenzie-Willamette. All employees' years of service with McKenzie-Willamette will be counted towards eligibility under Triad's benefit programs.

Responsibilities of McKenzie-Willamette

All financial liabilities incurred prior to finalizing this agreement remain McKenzie-Willamette's responsibility. McKenzie-Willamette will help obtain all necessary regulatory approvals for the partnership, help find a site for the new hospital, and pay off its long-term debt and other liabilities when the transaction is finalized.

Charity Care

The new company will continue to provide charity/indigent care in accordance with the Community Benefit Standards.

We have submitted this information to Hardy Myers, Oregon Attorney General, for review. A public hearing will be scheduled regarding this proposed transaction. Please watch for details so you can attend and comment about this proposal.

Questions?

**Contact Rosie Pryor, Director of Marketing and Planning,
McKenzie-Willamette Hospital, 1460 G Street Springfield, OR 97477-4197.**

*References to Triad refer to Triad Hospitals, Inc. or any of its affiliates.

ORS 65.800–815

65.800 Definitions for ORS 65.803 to 65.815. For purposes of ORS 65.803 to 65.815:

(1) "Hospital" means a hospital as defined in ORS 442.015 (19).

(2) "Noncharitable entity" means any person or entity that is not a public benefit or religious corporation and is not wholly owned or controlled by one or more public benefit or religious corporations. [1997 c.291 §2; 2001 c.104 §20]

65.803 Hospitals operated by nonprofit corporation; transfer of assets; approval by Attorney General. (1) Any public benefit or religious corporation that operates a hospital must provide written notice to, and obtain the written approval of, the Attorney General before closing any transaction to do either of the following:

(a) Sell, transfer, lease, exchange, option, convey, merge or otherwise dispose of all or a significant portion of its hospital assets to a noncharitable entity or to an unrelated charitable entity.

(b) Transfer control, responsibility or governance of a significant portion of the hospital assets or hospital operations of the public benefit or religious corporation to a noncharitable entity.

(2) This section does not apply to a public benefit or religious corporation if any of the following apply:

(a) The transaction is in the usual and regular course of the activities of the public benefit or religious corporation.

(b) The public benefit or religious corporation has furnished the Attorney General with a detailed written statement describing the proposed transaction and requesting a written waiver of the requirements imposed by this section, and the Attorney General:

(A) Has given the public benefit or religious corporation a written waiver of the requirements imposed by this section as to the proposed transaction; or

(B) Has not made a written determination with regard to the request within 45 days after receiving the request.

(c) The Attorney General, by rule, has excepted this kind of transaction.

(3) The notice and approval required by ORS 65.800 to 65.815 are in addition to any other notice or approval required by this chapter or other applicable law.

(4) Notice and approval is not required under ORS 65.800 to 65.815 if a political subdivision of the state controls the operation of the hospital.

(5) Any person may make a written request to the Attorney General that the person be given notice of requests for approval received by the Attorney General under this section. The Attorney General shall maintain a mailing list of persons who have requested notification under this subsection and shall promptly mail a copy of any request for approval received under this section to the persons on the list. In addition, the Attorney General shall promptly mail a copy of any request for waiver received under subsection (2) of this section to the persons on the list upon receiving the request for waiver. The Attorney General may not grant a waiver under subsection (2) of this section until 14 days after the mailing required by this subsection. [1997 c.291 §3]

65.805 Notice to Attorney General; fee; trade secrets. (1) The notice to the Attorney General required by ORS 65.803 must be accompanied by any application fee imposed under ORS 65.813 (3) and must contain a detailed statement describing the proposed transaction along with any other information the Attorney General requires by rule.

(2)(a) Upon a showing satisfactory to the Attorney General by a party to the proposed transaction, any material required to be submitted to the Attorney

General under subsection (1) of this section is a trade secret under ORS 192.501. The Attorney General shall classify the material as confidential and the material shall not be disclosed except as provided in paragraph (b) of this subsection unless the Attorney General determines that the material is necessary to the determination of an issue being considered at a public hearing as provided in ORS 65.807.

(b) To the extent that the material, or any portion thereof, would otherwise qualify as a trade secret under ORS 192.501, no action taken by the Attorney General, any authorized employee of the Department of Justice or any expert or consultant employed pursuant to ORS 65.813 in inspecting or reviewing such information shall affect its status as a trade secret. [1997 c.291 §4]

65.807 Public hearing; waiver; notice. (1) Before issuing a written decision under ORS 65.809, the Attorney General shall conduct a public hearing unless the Attorney General waives the requirement of a hearing. If a hearing is held, the Attorney General shall provide at least 14 days' notice of the time and place of the hearing in one or more newspapers of general circulation in the affected community and to the governing body of the county in which the hospital is located.

(2) Before waiving a hearing under this section, the Attorney General must mail notice of the intended waiver of public hearing to all persons on the mailing list maintained by the Attorney General under ORS 65.803 (5). The Attorney General may not take further action on the request for approval until at least 14 days after the mailing of the notice required by this subsection. [1997 c.291 §5]

65.809 Time for Attorney General decision; nature of decision; appeal. (1) Within 60 days after receipt of the notice required by ORS 65.803, the Attorney General shall notify the public benefit or religious corporation in writing of the Attorney General's decision on the proposed transaction. The Attorney General may extend this period for an additional 45 days if the extension is necessary to

obtain information as provided in ORS 65.813 (1). The period may be extended beyond 105 days only with the agreement of all parties to the transaction.

(2) The Attorney General may approve the transaction, give conditional approval to the transaction or decline to approve the transaction. If the Attorney General does not approve the proposed transaction, the Attorney General shall notify each party to the proposed transaction, in writing, specifying the reasons for the disapproval.

(3) Any party to the proposed transaction, within 60 days after receipt of the Attorney General's final order, may appeal the order as provided in ORS 183.310 to 183.550. For purposes of the judicial review, the specifications required to be set forth in the written notice from the Attorney General shall be deemed the Attorney General's findings of fact and conclusions of law. [1997 c.291 §6]

65.811 Disapproval of proposed transfer of assets. The Attorney General shall approve any proposed transaction subject to ORS 65.803 unless the Attorney General finds any of the following:

(1) The terms and conditions of the proposed transaction are not fair and reasonable to the public benefit or religious corporation.

(2) The proposed transaction will result in inurement to any private person or entity.

(3) The proposed transaction is not at fair market value.

(4) The proposed use of the proceeds from the transaction is inconsistent with any charitable trust to which the assets are subject.

(5) The proposed transaction involves or constitutes a breach of trust.

(6) The Attorney General has not been provided sufficient information to evaluate adequately the proposed transaction and the effects of the proposed transaction on the public.

(7) The proposed transaction significantly diminishes the availability or accessibility of health care services to the affected community.

(8) The proposed transaction is not in the public interest.

(9) The proposed transaction does not comply with all other legal requirements.
[1997 c.291 §7]

65.813 Consultants; cost. (1) Within the time periods specified in ORS 65.809, and for the purpose of evaluating the factors identified in ORS 65.811, the Attorney General may do any of the following:

(a) Contract with, consult with or receive advice from any state agency pursuant to those terms and conditions that the Attorney General considers appropriate.

(b) In the Attorney General's sole discretion, contract with, consult with or receive advice from consultants to assist in the Attorney General's review of the proposed transaction. The consultants shall be qualified and expert in the type of transactions under review. Before engaging any consultant, the Attorney General shall communicate with the parties to the proposed transaction regarding the engagement.

(2) The cost of any contract authorized under subsection (1) of this section shall be no more than is reasonably necessary to conduct the Attorney General's review and evaluation. Any contract entered into by the Attorney General under this section shall be exempt from the requirements of ORS 279.005 to 279.111. All contract costs incurred by the Attorney General under this section must be paid by the party to whom the transfer is to be made as described in ORS 65.803 (1).

(3) The Attorney General, by rule, may impose an application fee for costs incurred in reviewing and evaluating the proposed transaction. The fee must be paid by the party to whom the transfer is to be made as described in ORS 65.803 (1). [1997 c.291 §8]

65.815 Rules. The Attorney General may adopt such rules as are necessary to carry out the provisions of ORS 65.800 to 65.815. The Attorney General shall have the authority to ensure compliance with commitments that inure to the public interest. [1997 c.291 §9]