



LEGISLATURE OF PUERTO RICO

*Office of Legislative Services*

**CERTIFICATION**

I hereby certify to the Secretary of State that the following Act No. 3 (S.B. 1783) of the 4<sup>nd</sup> Session of the 14<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to prohibit the sale, cession, exchange and alienation of health facilities to private interests; to authorize the sale, cession, exchange and alienation of health facilities to the Municipalities and Public Corporations of the Commonwealth of Puerto Rico and to the Schools of Medicine; to repeal Act No. 190 of September 5, 1996, as amended,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 12<sup>th</sup> of December of 2003.

Elba Rosa Rodríguez-Fuentes  
Director

(S. B. 1783)

(No. 3)

(Approved January 1, 2003)

## **AN ACT**

To prohibit the sale, cession, exchange and alienation of health facilities to private interests; to authorize the sale, cession, exchange and alienation of health facilities to the Municipalities and Public Corporations of the Commonwealth of Puerto Rico and to the Schools of Medicine; to repeal Act No. 190 of September 5, 1996, as amended.

### **STATEMENT OF MOTIVES**

The Constitution of the Commonwealth of Puerto Rico, in its Article IV, Section 6 provides that it shall be the responsibility of the Executive Branch of the Government to establish an executive department to be in charge of the health of the people. It also recognizes in its Article III, Section 16, the power of the Legislature to create, organize, consolidate and define the duties of the Department of Health. This powerful constitutional mandate establishes the priority level with which the State must tend to the health needs of the people and as consequence to the facilities that provide health services.

Act No. 190 of September 5, 1996, as amended by Act 31 of July 6, 1997, established the mechanisms for the sale of the health facilities and health units known as Diagnosis and Treatment Centers (CDT, Spanish acronym) to private interests. The sale of these health facilities was executed together with the implementation of Act No. 72 of September 7, 1993, which established the public policy on Health reform. The alienation of said real properties responded to the new model for the rendering of health services,

which required for its subsistence the transfer of government health facilities to private interests. In this manner, the Government would not be the main health services provider of the people, but would instead perform supervisory and monitoring duties over those private entities destined to care for the health of Puerto Ricans. In a clear deviation from the spirit of the fathers of the Constitution, the Commonwealth of Puerto Rico would no longer be the provider of health services for the citizenry, thus abandoning its responsibility under the Constitution.

The health services plan adopted by the Reform has required the sale of the health facilities property of the Government for its financing. The sale of said facilities does not provide recurrent funds for the long term financing of the Health reform. This reality has resulted in the improvisation of financing for the payment of medical services and in the decentralizing and gradual dismembering of the health services for the medical indigent population.

By February 2000, the Department of Health together with the Government Development Bank and the Public Buildings Authority had alienated 45 of the 84 health facilities property of the State. According to the report submitted by the Committee on Health and Welfare of the Senate of Puerto Rico, on June 9, 2000, of the remaining 39 facilities, 17 had already been adjudicated and steps were being taken to complete the transaction. Data from 2001 provided by the Department of Health reveal that of the Diagnosis and Treatment Centers (CDT) throughout the 78 municipalities of the Island, 16 belonged to hospital corporations, 9 to private medical groups, 20 are Community Health centers, 2 to the Schools of Medicine, 16 to the municipalities and 15 to the Department of health. This data reveals the

urgency with which the Government alienated the health facilities to support a plan for which it did not have sufficient funds.

The truth of the matter is that the sale of the health facilities has resulted in the closing of installations, a millionaire deficit of the budget of the Department of Health, sales plagued with nebulous speculations as to its cause, and the uncertainty of the people as to the exact places where to receive health services.

It is necessary to reformulate and promulgate a new public policy in harmony with the needs of the Puerto Rican people, so as to guarantee them reliable access to health services. The preservation of these facilities in the hands of the State shall facilitate the constitutional function of the Department of State to watch over the health, safety and welfare of the people of Puerto Rico.

**BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:**

**Section 1.- Declaration of Public Policy.-**

It is the public policy of the Commonwealth of Puerto Rico to establish a public health accessible to the Puerto Rican people. Recognizing the proactive role of the State as guardian and defender of health, it is hereby declared that the health facilities are the principal asset of the Government, in order to comply with constitutional mandate to watch over the health and welfare of the citizenry. In this effort, the importance of maintaining those public facilities that service the citizenry in the hands of the Commonwealth of Puerto Rico is of utmost importance, in order to guarantee the rendering of health services to the future generations of Puerto Ricans in the Island.

It is hereby declared as the public policy of the Commonwealth of Puerto Rico that the health facilities of the State shall not be sold, ceded or otherwise alienated in favor of private interests.

On the other hand, the vital contribution of the Municipalities and the Public Corporations of the Government, such as the University of Puerto Rico are recognized within the public health systems and the same are excluded from the public policy that prohibits the sale of health facilities. The transfer of health facilities in favor of those Municipalities and Public Corporations that is thus provided, shall facilitate the role of the State to watch over the health of all Puerto Ricans.

Section 2.- Definitions:

- (a) ASES (Spanish acronym) - means the Health Insurance Administration of Puerto Rico.
- (b) Bank - means the Government Development Bank.
- (c) Department - means the Department of Health of Puerto Rico.
- (d) Contracting Entity - means a Municipality, Public Corporation of the Commonwealth of Puerto Rico or the School of Medicine that is successful in its proposal and under which is granted a contract for the lease, sublease, exchange, sale or cession of one or more health facility of the Commonwealth of Puerto Rico, to operate the same pursuant to the provisions of this Act.
- (e) Public Entity - means any agency, department, instrumentality or Public Corporation of the Commonwealth of Puerto Rico.
- (f) School of Medicine - means every academic entity, partnership, or subsidiary or corporation affiliated or related thereto that offers, operates and administers a curriculum or educational program in the field of health or medicine, duly approved, licensed and accredited by the Council on Higher Education of Puerto Rico.

- (g) Health Facilities - means those defined as "Health Facilities" in Act No. 101 of June 26, 1965, as amended, or any part, section or definition thereof, including the equipment and inventory installed in or used for its operation, that are owned and administered or the property deed of which is held by the Commonwealth of Puerto Rico, its agencies and instrumentalities.
- (h) Private interests - means a private natural or juridical person, professional group, private corporation, partnership or nongovernmental entities.
- (i) Municipality - means a municipality constituted pursuant to Act No. 81 of August 30, 1991, known as the Commonwealth of Puerto Rico Autonomous Municipalities Act" as amended, including those corporations, municipal consortiums or entities that pursuant to said Act are organized for the purposes established in this Act.
- (j) Secretary - means the Secretary of the Department of Health.
- (k) Alternate Use - means the use of a health facility for purposes not related to the rendering of health services.

### Section 3.- Authorization for the transfer of health facilities

The Secretary, upon previous determination of the availability of health facilities, shall establish together with the Bank the agreement through which the health facilities of the Department of Health shall be leased, subleased, sold, ceded, exchanged or transferred to the contracting entity for their operation and administration. The determination of the Secretary regarding the availability of health facilities shall be based on an evaluation of the population to be served, their health needs, the level of

satisfaction with the services rendered and the health facilities and services existing in the surrounding area, including but not limited to the inventory of the health facility, the quality of services and the fiscal situation of the State before and after the transaction is negotiated, perfected or concluded.

The Secretary shall determine the health facilities that are available, and those that are not necessary for compliance with the public policy established, may be transferred or alienated for an alternate use without being subject to the provisions of this Act. Provided, however, that the Secretary shall comply with the publication procedure provided in Section 5 of this Act. For these ends, and pursuant to Section 19 of this Act, the Secretary shall promulgate the regulations that shall govern the determination of eligibility of the health installations to be destined to an alternate use. Said regulations shall take into consideration the needs of the population and the usefulness of the facilities to be sold. Being it understood that each Municipality shall have the proper health facilities to meet the health needs of its population.

#### Section 4.- Use of Health Facilities.

All those health facilities that pursuant to the provisions of this Act are leased, subleased, exchanged, ceded, alienated or transferred to contracting entities shall be destined exclusively to the rendering of health services. Provided however, that those health facilities not needed for compliance of the public policy established may be given an alternate use upon determination of the Secretary pursuant to Section 3 of this Act.

The contracting entities interested in health facilities shall use the same to render health service upon compliance with the following requirements:

(a) Present to the Secretary and the Bank attesting evidence of the financial solvency and administrative capacity needed to guarantee the efficient and effective operation of the health facilities.

(b) Show knowledge of the public health operation system of the Commonwealth of Puerto Rico and of the manner in which the health facilities shall be operated and administered under said system as well as of the health needs of the population to be served.

#### Section 5.- Proposals

Pursuant to the provisions of this Act, when the Secretary determines to lease, sublease, sell, cede, exchange, transfer or alienate the health facilities, he/she shall publish two (2) notices in two (2) newspapers of general circulation in Puerto Rico, to inform the public of said determination.

The Secretary shall establish the procedure that shall govern the process of application, evaluation and selection of proposals in accordance with Section 19 of this Act.

In addition to those other requirements established by the Secretary, the proposals shall include the following:

(a) The commitment to acquire the bonds and policies established by law, as well as to accept at all times, the medical insurance coverage offered by the insurer or health services provider with which ASES has executed a contract for the acquisition of said coverage.

(b) The organization of health facilities and services to be established, and define its relation with the community and how to harmonize the health system services.



(c) The structural and operating organization of health services and patient management, according to the level of health services that is programmed for each particular installation.

(d) A projection of the use of the medical-hospital services to be generated by the population that shall receive the services. Said projection shall take into account the actuarial data available in the Department and at ASES.

(e) The work plan divided into phases for the implementation of the project, specifying those dates on which each of the phases shall be completed.

(f) The budget to cover the health needs of the patients of the community that shall assist to the health facility, the obligations and financial capacity of the Municipality or Public Corporation or School of Medicine.

(g) The design and plan for the implementation of a patient information and identification system that shall generate valid, reliable, precise and prompt data for the decision making process. Production of statistical reports, clinical reports, billing and collection to health plans, Medicare, direct payment and others. This plan shall be completely implemented on or before the first ninety (90) days of administration by the contractor party party.

(h) The composition of the medical and dental faculty, as well as the regulations that shall govern the same, and the process for the selection of its members and evaluation of the quality of the medical care offered at the health facility. It shall also include the continuing education program of the faculty.

(i) The Municipality shall include a copy of the ordinance approved by the Municipal Assembly authorizing the transaction or contracting to be executed between the Municipality and the Department.

#### Section 6.- Proposals --- Transfer Types or Plans

The proposals shall be based on different transfer types or plans of the health facilities, including but not limited to the lease, sublease, sale, cession, exchange or any other model of contract for the transfer of the administration and operation of services. The Secretary, together with the Bank and any public entity with a proprietary interest in said health facility, shall, in their discretion, determine the type of transfer that best adjusts to each case in particular, taking into account the property deed of the health facilities, the financial circumstances of the region or area in which the facilities are located, and the needs and characteristics of the population served by said health facilities.

The Secretary, together with the Bank and any public entity with a proprietary interest in said health facility may reject any or all proposals or execute contracts for the total or part of the health installations in a particular area or region.

#### Section 7.- Policy and Bonds - Requirements

The entity shall post and keep in effect during the term of the contract, the following policies and bonds:

- (a) Medical-Hospital Professional Liability Insurance:
- (b) A commercial public liability policy that includes, but is not limited to concluded operations and contractual liability; liability of independent contractors and extensive property damage.
- (c) Employer liability policy.

- (d) In the case of lease or sublease of the health facilities, a lease bond or its equivalent for that amount or value to be determined by the Secretary, together with the bank and in consultation with the Insurance Commissioner of Puerto Rico.
- (e) With the advice of the Insurance Commissioner, the Secretary and the Bank, any other insurance policy or bond that under the circumstances are deemed necessary to protect the interests of the Commonwealth of Puerto Rico.

Every policy or bond shall be underwritten by an insurance entity of known solvency and responsibility, duly authorized to do business in Puerto Rico by the Department of State and the insurance Commissioner.

In the case of a lease, sublease or cession of operations and administration of the health facility, it shall be compulsory for all contracting entity to include the Commonwealth of Puerto Rico, the Bank, the Department and any public entity with a proprietary interest in said health facilities as additional insured under the liability insurance policies required by this Act, or in the absence thereof, it shall be required to include in the same a release of responsibility issued by the contracting entity and its insurance company in favor of the Commonwealth of Puerto Rico, the Bank, the Department and any public entity with a proprietary interest in said health facilities.

The Secretary and the Bank, upon consultation with the Insurance Commissioner of Puerto Rico, shall establish the minimum amounts that the contracting agencies shall be obligated to maintain in policies and bonds.

#### Section 8.- Contracts --- Leases: Initial term of duration

Pursuant to the provisions of this Act, the initial terms of all contracts through which one or more government health facility is ceded by lease may

not exceed thirty (30) years, and effectiveness and renewal thereof shall be subject to the faithful compliance of the provisions of this Act, of all other applicable laws and regulations, including those regarding the licensing and certification of health facilities, and the obligations contained in the contracted that formalizes the transaction and the proposal filed by the contracting agency and accepted by the Department.

**Section 9.- Contracts --- Prohibition to cede or sublease without consent**

In the case a health facility is ceded by lease, the leasing contracting agency may not sublet or otherwise cede in whole or in part, the use of the health facilities subject of the contract to private entities, without the previous written consent of the Secretary, to whom the contracting entity shall furnish all the pertinent information in order for him/her to understand and fully evaluate the reasons, scope, terms and conditions of said sublease or cession, as well as the identity, moral and financial solvency, experience and administrative capacity of said sublessee or cessionary, before approving the same.

In case of denying consent, the Secretary shall state, in writing, the reasons for such denial and shall notify the decision to the contracting entity within sixty (60) days counting from the receipt of the request for consent remitted by the contracting entity.

**Section 10.- Contracts --- Compliance with additional requirements**

Nothing of the stated in this Act shall be construed as to exclude the contracting entity from compliance with all the other requirements concerning documents and certifications required by the Department. The Department may carry out those audits and require the reports it deems pertinent to ensure compliance by part of the contracting entity of all its

contractual obligations under this Act and any other laws and regulations in effect, as well as to obtain the information needed to follow-up or implement the programs of the Department.

#### Section 11.- Contracts ---Responsibilities of the Department

The Secretary shall be responsible for ensuring compliance with the specifications of the contract entered with the contracting entity, executed by virtue of this Act or with any private interest that has acquired a health facility under Act No. 190 of September 5, 1996. The Secretary may conduct those audits and require the reports deemed pertinent and necessary to ensure compliance by the contracting entity of all its contractual obligations under this title, or compliance by a private interest that has acquired s health facility under Act No. 190 of September 5, 1996. The power to require information from the contract shall be construed liberally in favor of the Secretary.

#### Section 12.- Contracts --- Specific Provisions

No contract, transaction, or alienation of a health facility shall affect the rights of the employees of the Department with regard to the retirement or savings system.

The regular employees who do not become employees of the contracting entity and are relocated in another agency or dependency of the Commonwealth of Puerto Rico, shall not lose those rights and benefits that for merit, time and services rendered they have obtained as employees of the Department.

Those employees who are not relocated within ninety (90) days counting from the execution of the transfer contract pursuant to the provisions of this Act, shall be entitled to liquidation in money of the benefits accrued for sick and vacation leaves, savings and retirement.

The Secretary shall establish those terms and conditions needed to assure those employees of the Department who do not become employees of the contractor party, compliance with Act No. 5 of October 14, 1975, known as the "Puerto Rico Public Service Personnel Act", as amended. Those regular employees of the Department that are working in the facilities at the time of the contracting, and who express an interest in rendering services for the contractor party as the new employer, shall have preferential right to be interviewed and considered to hold those positions they had held previously in said facilities.

The Office of the Management and Budget and the central Personnel Administration Office shall participate, together with the Secretary in the coordination needed for the relocation and dismissal process. A special registry shall be created in said agencies to give preference to those employees who are not transferred to the contracting entities for relocation in the various government bodies.

To attain this purpose, the Secretary, together with the Office of the Management and Budget, shall appoint a Special Relocation Coordinator. This temporary official shall establish the norms for the referral and selection of the candidates to the different government bodies. The Department of Labor shall give priority to the employees whose names appear in said Registry in their employment programs.

The Central Human Resources Labor and Administrative Advisory Office (OCALARH, Spanish acronym) shall oversee compliance of the provisions of this Section and of Act No. 5 of October 14, 1975, known as the "Puerto Rico Public Service Personnel Act", as amended, and other applicable laws and regulations.

### Section 13.- Contracts --- Contracting Entities

When establishing the terms of the contract and the minimum negotiated price, both contracting parties must be present: the contracting party and the contractor party. The minimum price shall not be less than the debt that could exist for the construction of said facility.

The Secretary, the Bank and any public entity with a proprietary interest in said facilities shall be the contractor party

If the contract is with a municipality, public corporation or school of medicine, the Mayor of the Municipality shall be a contractor party, as well as any other municipal official designated by the Mayor for said purpose, the representative of the public corporation or the president of the school of medicine, respectively.

### Section 14.- Contracts --- Municipality

The sale, cession, exchange, lease, sublease or any other type of contracting for the acquisition, operation or administration of health facilities, pursuant to the provisions of this Act in favor of any Municipality of the Commonwealth of Puerto Rico, shall entail the modification of the contribution that said municipality makes to the health welfare system provided in Act No. 72 of September 7, 1993, as amended. The contribution that said contracting municipality makes shall be the adequate one, negotiated with the Secretary, the Bank and ASES, in accordance with the fiscal situation of the Municipality and the population of said region.

### Section 15.- Contracts --- Alienation

The contracting entity that acquires any health facility by virtue of the provisions of this Act shall receive its just title. However, the following clauses shall be included in the public deed or contract through which a health facility is transferred:

(a) Any health facilities that are subsequently alienated shall be subject to a conventional retraction in favor of the Commonwealth of Puerto Rico, which may be exercised at any time counting from the effectiveness of the contract between the parties. The right to retract in favor of the Commonwealth of Puerto Rico shall be permanent and will not expire.

(b) The Commonwealth of Puerto Rico shall have the right of first refusal in the event the contracting entity expresses its intention to alienate health facility(ies). Said right of first refusal shall be understood to have been waived by the Commonwealth of Puerto Rico if within ninety (90) after having been notified in writing, the Secretary does not communicate his/her intention to reacquire said health facilities.

The reacquisition price of the health facilities for the Commonwealth of Puerto Rico shall be that for which the contracting entity acquired the facility or the appraisal price established by the Bank at the time of the reacquisition, whichever of the two is less. The rights stated above shall be observed in the event the contracting entity ceases or substantially reduces its operations in the health facilities.

Section 16.- The sale of health facilities property of the Commonwealth of Puerto Rico, public entities or municipalities to private interests in contravention with the provisions of this Act, is hereby prohibited.

Section 17.- The contracts in effect and in harmony with the laws that permitted their creation and executed prior to the effectiveness of this Act, shall be subject hereafter to the provisions of this Act that are not in conflict with said contracts.

Those private interests that acquired health facilities pursuant to Act No. 190 of September 5, 1996, and that due to financial insolvency,



bankruptcy, breach of contract, operational reduction, or other reason that causes the closing or a reduction in the operation of the facility, may sell said facilities to the Department at a deferred price, through the fixing of a rate by agreement of the Department, the Bank and the private entity, and which rate shall be credited as payment to the price fixed in favor of the Commonwealth of Puerto Rico for the purchase and transfer of said facility to the government.

Section 18.- Those natural or juridical persons who have been awarded a bid or are in the process of negotiating a sale, cession, exchange or the alienation of health facilities in favor of private interests prior to the promulgation of this act, may complete said transaction according to the terms and conditions negotiated with the Secretary and the Bank and pursuant to the provisions of this Act. This Act shall be applicable to future transactions as well as to the renewal of those contracts that are in effect at the time of the approval of this Act.

Section 19.- Every agreement, contract or part thereof that is in contravention with the public policy set forth in this Act shall be null and ineffective.

#### Section 20.- Regulations

The Secretary shall promulgate the regulations, norms, and procedures to implement the provisions of this Act within one hundred and twenty (120) days as of the approval of the same.

#### Section 21.- Evaluation

In the exercise of its duty to watch over the health of the people of Puerto Rico, the Department shall develop and enforce a continuous evaluation and follow-up system that shall allow it to examine the quality of the services rendered in all health facilities subject of the contract, as

provided in this Act, of the contracting entities or those private interests that have obtained ownership prior to the approval of this Act.

Likewise, the Department shall require and supervise the implementation of an information and data bank system that allows for the compilation of vital statistic data and registers required by law. The Secretary shall have full power to require, audit and compile statistical information regarding those health facilities that are alienated, leased or subleased to contracting entities, and any sublessee who operates and/or administers, in whole or in part, said health facilities. The Department, through its Secretary, shall also have full authority to require this information to those private interests that pursuant to Act No. 190 of September 5, 1996, as amended, had acquired health facilities of the Commonwealth of Puerto Rico.

#### Section 22.- Annual Reports

No later than July 31 of each year, the Secretary shall render a annual report to the Governor of the Commonwealth of Puerto Rico and to the Legislature containing, among others, a list of the contracts executed pursuant to the provisions of this Act in the immediately preceding fiscal year and the state of progress of the health system, regarding the transfer of the administration and operation, under this Act, of government health facilities as well as any other pertinent information deemed necessary to be notified to the Governor and the Legislature.

Section 23.- Act No. 190 of September 5, 1996, as amended, known as the "Act to Regulate the Government Health Facilities Privatization Process" is hereby repealed.

**Section 24.- Separability**

Should a court with jurisdiction declare any section or part of this Act unconstitutional, said ruling shall not have an effect of unconstitutionality on the other sections or parts of this Act.

**Section 25.- Effectiveness**

This Act shall take effect immediately after its approval.