

ASSEMBLY HEALTH COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2368

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 7, 1996

The Assembly Health Committee reports favorably and with committee amendments Assembly Bill No. 2368.

As amended by the committee, this bill is intended to protect the public interest in the conversion of nonprofit hospitals and other nonprofit entities to for profit status.

The amended bill requires nonprofit acute care hospitals to give at least 90-days notice to the Attorney General before disposing of a substantial amount of their assets to a for profit entity to enable the Attorney General to conduct a review of the transaction. The proposed for profit purchaser of the nonprofit's assets shall pay the reasonable costs of the Attorney General's review. Also, if a charitable fund results from the transaction, the required broad-based community governance of the charitable fund shall be subject to review by the Attorney General, in consultation with the Commissioner of Health and Senior Services.

The bill also requires the for profit purchaser of the hospital to pay for an independent health care access monitor, to be hired by the Commissioner of Health and Senior Services, to monitor and report publicly for three years on community health care access, including the level of uncompensated care for indigent persons, provided by the for profit acute care hospital.

Also, under the provisions of the bill, the trustees and senior managers of the nonprofit entity are prohibited from investing in the for profit entity for a period of three years following the disposition of assets or operations.

The bill further provides that an applicant for a certificate of need or license to operate a for profit hospital that was formerly a nonprofit hospital, will be required to undergo a determination by the commissioner of the applicant's suitability and responsibility to operate an acute care hospital in the State. The applicant also must agree to maintain or increase the level of uncompensated care provided by the predecessor nonprofit hospital and must develop a plan for providing community benefits and obtain approval of the plan from the commissioner.

The amended bill also establishes additional requirements for the conversion of a nonprofit hospital, as well as new requirements with respect to the conversion of a non-hospital nonprofit corporation, to for profit status.

Specifically, the committee amendments require that the Attorney General make a determination as to whether a nonprofit hospital or a health maintenance organization (HMO), health service corporation or other health care provider incorporated as a nonprofit corporation which intends to convert to for profit status has assets which accrued as the result of beneficial treatment resulting from its nonprofit status, including, but not limited to, financial subsidies or favorable tax or regulatory treatment, and the amount which the nonprofit entity shall compensate the State, which amount the State shall be entitled to receive upon the conversion of the nonprofit entity to for profit status. The compensation may be in the form of cash or securities, or a combination thereof. If the assets are not readily liquid, the nonprofit entity may provide for a plan of compensation subject to the Attorney General's approval. The amount received by the State is to be placed in a charitable fund.

The amendments require that with respect to an HMO, health service corporation or other health care provider incorporated as a nonprofit corporation which intends to convert to for profit status, the Attorney General is to conduct a public hearing in connection with his review of the proposed transaction and developing a plan for the governance of the charitable fund and that the monies in the fund shall be expended for health-related purposes. These requirements are intended to parallel provisions of the bill which apply to nonprofit hospitals proposing to convert to for profit status.

The amendments stipulate that the Attorney General may subpoena additional information or witnesses, require and administer oaths, and require sworn statements in connection with his review of a proposed transaction to convert a nonprofit hospital or other entity to for profit status.

In addition, the amendments provide that no director, officer, agent or employee of a nonprofit hospital or other entity shall benefit directly or indirectly from the conversion of that entity to for profit status.

The amendments also provide that a nonprofit corporation which converts to a mutual insurance corporation shall retain charitable trust obligations to preserve its assets for charitable purposes, and that this obligation is to be paid at such time as the mutual insurance corporation enters into an agreement or transaction with a for profit corporation or otherwise generates sufficient funds to fulfill its charitable trust obligation. The fair market value of the health service corporation on the date of conversion to a mutual insurance corporation, augmented by any increase in the value of the mutual insurance corporation attributable to the use of the charitable trust assets or to its prior status as a nonprofit corporation, shall be the basis for the valuation of the trust obligation, as determined by the

Attorney General.

Finally, the amendments delete the requirement that the governance of a charitable fund created as a result of the conversion of a nonprofit hospital be subject to court approval, and provide that the governance of the fund shall be subject to review and approval by the Attorney General, in consultation with the Commissioner of Health and Senior Services.