

ASSEMBLY, No. 2497

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 14, 1996

By Assemblyman CARABALLO

1 AN ACT concerning conversion of certain nonprofit entities to for
2 profit status and supplementing Title 52 of the Revised Statutes.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. a. A hospital, health maintenance organization, health service
8 corporation or other health care provider that is incorporated as a
9 nonprofit corporation in this State that intends to transfer, restructure,
10 or convert its activities in conjunction with for-profit activities shall
11 secure written consent from the Attorney General prior to entering
12 into any agreement or transaction to:

13 (1) Sell, transfer, lease, exchange, option, convey, restructure, or
14 convert or otherwise dispose of a material amount of its assets, as
15 established by regulation of the Attorney General, to a for-profit
16 corporation or entity or to a mutual insurance corporation or entity;
17 or

18 (2) Transfer control, responsibility, or governance of a material
19 amount of the assets, operations, or business of the nonprofit
20 corporation to a for-profit corporation or entity or a mutual insurance
21 corporation or entity.

22 b. A nonprofit corporation shall give written notice to the Attorney
23 General at least 90 days before it enters into an agreement or
24 transaction subject to the provisions of this section.

25 c. Within 90 days of receipt of the written notice required by
26 subsection b. of this section, the Attorney General shall notify the
27 nonprofit corporation in writing of his decision to approve or
28 disapprove of the proposed agreement or transaction. The Attorney
29 General may extend this review period for an additional 60 days.

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31 2. a. No later than 45 days after the Attorney General has received
32 notice from the nonprofit corporation of its intent to enter into an
33 agreement or transaction subject to the provisions of this act, the
34 Attorney General shall hold at least one public hearing in the service
35 area of the nonprofit corporation. The number of public hearings that
36 shall be held shall correspond to the size of community in the
37 nonprofit's service area and the nature and value of the agreement or

1 transaction. At least 21 days prior to the public hearing, the Attorney
2 General shall provide written notice of the time and place of the
3 hearing through publication in one or more newspapers of general
4 circulation in the affected service area and shall provide notice to the
5 board of chosen freeholders of the county in which the facility is
6 located, in the case of a hospital or other health care facility, and to
7 other interested parties, as determined by the Attorney General.

8 b. The Attorney General may subpoena additional information or
9 witnesses, require and administer oaths, and require sworn statements
10 at any time prior to making a decision on the proposed plan of
11 agreement or transaction.

12 c. The Attorney General shall provide access to the records
13 relating to the proposed agreement or transaction at no cost to the
14 public. The records shall be considered public information and be
15 made available at both the Attorney General's office and the office of
16 the nonprofit corporation.

17 d. The Attorney General may charge a nonprofit corporation for
18 the costs of providing the public with notice and reasonable access to
19 records relating to the proposed agreement or transaction of the
20 nonprofit corporation.

21 e. Within five working days after submitting a plan of agreement
22 or transaction to the Attorney General for approval, the nonprofit
23 corporation shall publish notice of the proposed plan, in a form
24 approved by the Attorney General, in newspapers and circulated once
25 per week for three weeks in the service area of the nonprofit
26 corporation.

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28 3. Prior to approving a proposed plan of agreement or transaction,
29 the Attorney General shall find that the plan meets all of the following
30 requirements:

31 a. The terms and conditions of the agreement or transaction are fair
32 and reasonable to the citizens of the State, the public, recipients and
33 potential recipients of services, enrollees, and subscribers, as the case
34 may be, of the nonprofit corporation;

35 b. The agreement or transaction is in the public interest. An
36 agreement or transaction shall not be considered to be in the public
37 interest unless appropriate steps have been taken to safeguard the
38 value of charitable assets and ensure that any proceeds of the
39 transaction are irrevocably dedicated to charitable health care
40 purposes;

41 c. The agreement or transaction will not result in inurement to any
42 private person or entity, including stock options, agreements not to
43 compete, or other private benefits;

44 d. The agreement or transaction does not create or have the
45 likelihood of creating an adverse affect on the availability of health
46 care services to the affected service area, and sufficient safeguards are

1 included to assure the affected service area continued access to
2 affordable care;

3 e. The nonprofit corporation submitting the agreement or
4 transaction used due diligence in selecting the for-profit corporation
5 or entity or mutual insurance corporation or entity, and in negotiating
6 the terms and conditions of the transaction when deciding to sell,
7 transfer, lease, exchange, option, convey, restructure, convert, or
8 otherwise dispose of its assets;

9 f. A charitable trust shall be set aside equal to the fair market value
10 of the nonprofit corporation. Fair market value shall be determined as
11 of the effective date of the agreement or transaction, as if the nonprofit
12 corporation had voting stock outstanding and 100% of its stock were
13 freely transferable and available for purchase without restrictions.
14 Consideration shall be given to market value, investment or earnings
15 value, net asset value, and a control premium, if any. The Attorney
16 General may permit all or a portion of the consideration conveyed to
17 the charitable trust to consist of stock of the for-profit corporation;

18 g. The charitable trust distribution shall be dedicated to an existing
19 or new tax-exempt charitable organization operating pursuant to 26
20 U.S.C. § 501 (c)(3) of the federal Internal Revenue Code;

21 h. Each charitable corporation receiving the charitable assets, its
22 directors, officers, and staff shall be and remain independent of the for-
23 profit corporation or entity or mutual insurance corporation or entity,
24 and its affiliates.

25 No officer, director or staff member of the nonprofit corporation
26 which submits the proposed plan of agreement or transfer to the
27 Attorney General, at the time the plan is submitted, or on the effective
28 date of the agreement or transaction, or thereafter, shall be qualified
29 to be an officer, director or staff member of the charitable corporation
30 which receives the charitable assets.

31 No director, officer, agent or employee of the nonprofit corporation
32 which submits the plan or the charitable corporation which receives
33 the charitable assets, shall benefit directly or indirectly from the
34 agreement or transaction;

35 i. The charitable corporation which receives the charitable assets
36 shall establish a mechanism to avoid conflicts of interest and to
37 prohibit grants that benefit the board of directors and management of
38 the for-profit corporation or entity or mutual benefit corporation or
39 entity; and

40 j. The charitable mission and grant-making functions of the
41 charitable corporation which receives the charitable trust assets shall
42 be dedicated to serving the state's unmet health care needs, particularly
43 with regard to medically uninsured and underserved populations, and
44 shall focus on promoting access to care and improving quality of care.

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46 4. a. The Attorney General may:

1 (1) Contract with, consult, and receive advice from any State
2 agency regarding a proposed plan of agreement or transaction, as the
3 Attorney General deems appropriate; and

4 (2) Contract with experts or consultants to assist in reviewing the
5 proposed plan of agreement or transaction as is reasonable and
6 necessary.

7 b. Contract costs shall not exceed an amount that is necessary to
8 conduct the review and evaluation required pursuant to this act. The
9 Attorney General may charge the nonprofit corporation which submits
10 the proposed plan an assessment fee to pay the cost of expert
11 consultants required to help review public benefit and charitable trust
12 proposals and to assess the fair market value of the charitable assets.
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14 5. If the Attorney General receives information indicating that the
15 for-profit corporation is not fulfilling its commitment to the affected
16 service area pursuant to section 3 of this act, the Attorney General, or
17 his designee, shall hold a public hearing upon 10 days notice to the
18 affected parties. If, after the hearing, the Attorney General
19 determines that the information is true, he shall institute proceedings
20 to require a corrective action plan from the for-profit corporation.
21 The Attorney General shall retain oversight of the for-profit's
22 obligations under the corrective action plan for as long as necessary to
23 ensure compliance with this act.
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25 6. a. The charitable corporation which receives the charitable
26 assets pursuant to the provisions of section 3 of this act, shall provide
27 the Attorney General with an annual report of its grant-making and
28 other charitable activities related to its use of the charitable assets
29 received. The annual report shall be made available to the public at
30 both the Attorney General's office and the office of the charitable
31 corporation.

32 b. If the nonprofit corporation which submitted the plan of
33 agreement or transaction to the Attorney General continues to exist
34 after the agreement or transaction is approved, the corporation shall
35 submit to the Attorney General, for his approval, an annual report that
36 identifies the activities to be undertaken by the nonprofit corporation
37 to meet its public benefit and community benefit obligations.
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39 7. a. Notwithstanding the provisions of P.L.1995, c.196
40 (C.17:48E-45 et seq.) to the contrary, a health service corporation that
41 converts to a mutual insurance corporation retains charitable trust
42 obligations to preserve its assets for charitable purposes. This
43 obligation shall be paid if the mutual insurance corporation enters into
44 an agreement or transaction with a for-profit corporation or otherwise
45 generates sufficient funds to fulfill its charitable trust obligation. The
46 fair market value of the health service corporation on the date of

1 conversion to a mutual insurance corporation, augmented by any
2 increase in value of the mutual insurance corporation attributable to
3 the use of the charitable trust assets or to its prior status as a nonprofit
4 corporation, shall be the basis for the valuation of the trust obligation,
5 consistent with section 3 of this act.

6 b. A mutual insurance corporation that enters into any agreement
7 or transaction with a health service corporation acquires and retains a
8 charitable trust obligation to preserve the assets of the health service
9 corporation for charitable purposes. This obligation shall be paid if
10 the mutual insurance corporation enters into an agreement or
11 transaction with a for-profit corporation. The fair market value of the
12 health service corporation on the date of conversion to a mutual
13 insurance corporation, augmented by any increase in value of the
14 mutual insurance corporation attributable to the use of the charitable
15 trust assets or to its prior status as a nonprofit corporation, shall be
16 the basis for the valuation of the trust obligation, consistent with
17 section 3 of this act.

18 c. At such time that the mutual insurance corporation enters into
19 an agreement or transaction to demutualize, it shall submit an asset
20 distribution plan to fulfill its charitable obligations, consistent with the
21 requirements under section 3 of this act. The Attorney General shall
22 hold public hearings consistent with the provisions of section 2 of this
23 act. No agreement or transaction of a mutual insurance corporation
24 to demutualize shall occur until the Attorney General consents to the
25 plan as fair and equitable to the public and follows the other provision
26 of this act.

27 d. The requirements of this act, as they apply to a health service
28 corporation seeking to convert to a domestic mutual insurer, shall be
29 in addition to any requirements established pursuant to P.L.1995,
30 c.196 (C.17:48E-45 et seq.).

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32 8. Any final action by the Attorney General pursuant to section 3
33 of this act shall be subject to judicial review by the Superior Court at
34 the initiation of the nonprofit corporation or any person that was a
35 party to the agency proceeding. Any person adversely affected by the
36 final agency decision shall be considered a party to the proceeding,
37 including consumers or community groups representing the citizens of
38 the state.

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40 9. The Attorney General shall adopt rules and regulations pursuant
41 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
42 et seq.) to carry out the provisions of this act.

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44 10. This act shall take effect immediately.

STATEMENT

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Substantial and recent changes in market and health care conditions are affecting hospitals, health maintenance organizations, health service corporations and other health care providers that are incorporated as nonprofit corporations in the State, creating a need for equal regulatory treatment and competitive equality for health care providers and insurers.

The bill requires a nonprofit corporation to provide the Attorney General with 90 days notice of its intention to enter into any agreement or transaction to sell, transfer, lease, exchange, option, convey, convert, restructure or otherwise dispose of a material amount of its assets to a for profit corporation or entity or to a mutual insurance corporation or entity. The bill requires the Attorney General to hold at least one public hearing and to notify the nonprofit corporation in writing of his decision to approve or disapprove of the proposed agreement or transaction. The Attorney General shall make his decision to approve or disapprove the agreement or transaction based on criteria set forth in the bill.

Requires Attorney General approval of sale or transfer of assets of nonprofit health care provider or insurer to for profit or mutual benefit corporation.