

SENATE, No. 1686

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 18, 1996

By Senator MacINNES

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.

27

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  
12 nonprofit corporation had voting stock outstanding and 100% of its  
13 stock were freely transferable and available for purchase without  
14 restrictions. Consideration shall be given to market value, investment  
15 or earnings value, net asset value, and a control premium, if any. The  
16 Attorney General may permit all or a portion of the consideration  
17 conveyed to the charitable trust to consist of stock of the for-profit  
18 corporation;

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

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

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

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

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

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

1 4. a. The Attorney General may:

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

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

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

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

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

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

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

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

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

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

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45 10. This act shall take effect immediately.

## 1 STATEMENT

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

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

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