

A Conversion Model Act

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Conversion Model Act

Introduction:

The most important consumer protection in the conversion of a nonprofit hospital or insurer into a for-profit corporation is a conversion law that governs the review of the transaction. Since 1997, when states started enacting conversion laws, consumers have discovered that these laws are the foundation for protecting consumer interests throughout the conversion process. Not only do conversion laws give consumers the opportunity to participate and speak out in a conversion, but they give regulators a direction and a process for reviewing an extremely complicated transaction.

Currently 28 states have a conversion law that covers either nonprofit hospitals and insurers or both, and consumers and regulators have found these laws to be invaluable tools especially if they are detailed and thorough. Those laws that are less comprehensive sometimes leave regulators and consumers vulnerable to minimal review or unfortunate interpretation. A law that is effective must be comprehensive and complete, leaving the consumer and the regulator with a clear direction for the review and analysis of a proposed conversion.

Conversion laws can also be enhanced by a regulator's willingness to interpret the law in a manner most protective of consumer interests. Some regulators read the laws to allow them to expand certain protections for consumers. For instance, in Maryland, Insurance Commissioner Steve Larsen in his review of a proposed conversion of a Blue Cross Blue Shield plan interpreted the conversion statute to include numerous public hearings which benefited the process, and also ensured time for consumers to raise questions and voice their concerns.

Key aspects of a conversion law can provide consumers with a meaningful seat at the table throughout the conversion. For instance, conversion laws can stipulate how the public must be part of the review process, including allowing testimony at public hearings, creating an entity to maintain the nonprofit's charitable assets, and establishing criteria for making conversion filings accessible to the public. In addition, an independent valuation can safeguard the community's charitable assets and the review criteria used by a regulator can protect the community's interest in the process. Although all of these conversion law provisions are designed to benefit consumers and protect their interests, such provisions also benefit regulators, by authorizing them to conduct a process that is comprehensive, fair and thorough. So it is the sum of all the parts of a conversion law that gives it the ability to protect and provide direction.

In the last few years, legislators and communities have been successful in introducing improved conversion laws that address some of the more recent trends in conversions. We have included in this Model Act those more recent and enhanced examples of conversion laws throughout the country. We hope you will use this Model Act as a tool to craft a conversion law in your state.

Conversion Model Act

An Act concerning the conversion of nonprofit hospitals, medical-surgical facilities, health maintenance organizations, or health service corporations.

Digest

The Legislature recognizes the substantial changes in market and health care conditions that are affecting nonprofit hospitals, medical-surgical facilities, health maintenance organizations, health service corporations, and other nonprofit health providers/insurers and further recognizes the need for equal regulatory treatment and competitive equality for health providers and insurers. This bill subjects a nonprofit corporation to requirements before the nonprofit corporation enters into any agreement or transaction to sell, transfer, lease, exchange, option, convey, convert, give, enter a joint venture, merge or otherwise dispose of a material amount of its assets to a for-profit corporation or entity or to a mutual corporation or entity.

SECTION 1: Definitions

“Acquiror” the for profit corporation or nonprofit corporation which gain(s) an ownership or control in a nonprofit hospital, health insurance corporation, health maintenance organization, non-profit hospital service corporation and non-profit medical service corporation.

“Conversion”

- (1) To sell, transfer, lease, exchange, option, convey, convert, give, enter a joint venture, merge or otherwise dispose of a nonprofit’s assets to a for-profit corporation or entity or to a mutual corporation or entity or a nonprofit corporation or entity when a material amount¹ of the assets of the nonprofit corporation are involved or will be involved in the agreement or transaction.
- (2) To transfer control, responsibility, or governance of a material amount of the assets, operations, or business of the nonprofit corporation to any for-profit corporation or entity or to any mutual corporation or entity or any nonprofit corporation or entity.
- (3) To enter into a change of governance, ownership, or operational control that, when combined with one or more transactions occurring within a five-year period, results in a change of governance, ownership, or operational control of a material amount of assets, operations, or business in any for-profit corporation or entity or to any mutual corporation or entity or any nonprofit corporation or entity.

“Essential Services” health care services that constitute 10 percent or more of the hospital’s admissions determined at the time the conversion application is filed.

¹ The term “material amount” should be interpreted to mean 10% or more

“Fair Market Value” The value of the converting nonprofit corporation determined as if the recipient of the set aside had voting stock outstanding and one hundred percent of its stock were freely transferable and available for purchase without restrictions. In determining the fair market value, consideration shall be given to market value, investment or earnings value, net asset value, good will, amount of donations received since establishment and a control premium, if any.

“Free Care” Health care provided by a hospital to patients without insurance for which the hospital does not expect reimbursement.

“For profit corporation” A legal entity formed for the purpose of transacting business which has as any one of its purposes pecuniary profit.

“Mutual Corporation” A corporation that operates without issuing stock and is organized to benefit its policyholders who have an economic interest in or own the corporation.

“Nonprofit corporation” A corporation subject to the general laws, including any corporation organized under special provisions of the general laws or under a private act, which is declared to be a "charitable corporation" and includes nonprofit hospital, medical-surgical facility, health maintenance organization, health service corporation or other nonprofit health provider/insurer.

“Nonprofit Insurer” A nonprofit health maintenance organization, health service corporation or other nonprofit health provider/insurer²

“Charitable Assets” Includes assets held for the benefit of the public or the community; assets in which the public has an ownership interest; and assets owned by a governmental entity.

“Regulating Entity”

- (1) In the review of a conversion of a nonprofit hospital, the regulating entity shall be the Attorney General in consultation with the Department of Public Health³;
- (2) In the review of a conversion of a nonprofit health services plan, health maintenance organization, health service corporation or other nonprofit health provider/insurer, the regulating entity shall be the Insurance Commissioner and the Attorney General.

“Subscriber” Persons or groups of persons who contract with a health insurance corporation, health maintenance organization, nonprofit hospital service corporation or nonprofit medical service corporation for health insurance.

“Transacting Parties” Person or persons who seeks either to transfer or acquire ownership or a controlling interest or controlling authority in a nonprofit corporation including a nonprofit

² States may have different names for nonprofit health providers/insurers. The language in this Act is not inclusive. For example, Connecticut has “hospital service corporations,” “medical service corporations,” and “health care centers.” The Act in your state should be consistent with state law and the titles the state uses for all nonprofit health corporations.

³ States may have different names for the Department of Health. The language in this Act is not inclusive.

hospital, health insurance corporation, health maintenance organization, non-profit hospital service corporation or non-profit medical service corporation which would result in a change of ownership, control or authority of the nonprofit corporation.

SECTION 2: Attorney General Approval

Any nonprofit hospital, medical-surgical facility, health maintenance organization, health service corporation or other nonprofit health provider/insurer that is proposing a conversion of the nonprofit corporation to for profit or proposing a conversion of the nonprofit corporation in conjunction with a for-profit corporation or other nonprofit corporation shall, prior to entering into conversion, obtain written consent from the Attorney General before entering into a conversion.

SECTION 3: Application and Notice

- (a) A nonprofit corporation must give written notice which shall include a conversion application to the Attorney General or other appropriate regulating entity before it enters into a conversion as defined in Section 1 of this Act or otherwise disposes of its assets.
- (b) A nonprofit corporation must provide the Attorney General with written proof that a majority of its board voted in support of the conversion and written certification that the following items were given to each member of the nonprofit's board:
 - (1) this Act in its entirety;
 - (2) the conversion application as filed with the Attorney General with supporting documents; and
 - (3) the charitable mission of the nonprofit corporation.
- (c) Within ninety (90) days of the receipt of a completed notice and application filed pursuant to Section 3(d) of this Act, the Attorney General shall notify the nonprofit corporation in writing of the decision to approve, disapprove or conditionally approve the conversion. The Attorney General may extend this period for an additional sixty (60) days.
- (d) Notice and application to the Attorney General shall include and contain all information required pursuant to Section 6 of this Act and any other information deemed necessary by the Attorney General. No notice shall be complete until the Attorney General has deemed the filing to be complete. Failure by the parties to the transaction to provide timely information to the Attorney General shall be sufficient grounds for the Attorney General to disapprove the proposed transaction.
- (e) Any material change in the terms or conditions of the proposed conversion shall require a new application to be filed with the Attorney General for purposes of this Act.

- (f) Within five (5) working days after presenting notice and application of a conversion to the Attorney General for approval, the nonprofit corporation proposing the conversion must publish notice of the proposed plan in a form approved by the Attorney General once per week for three weeks in newspapers of general circulation where the nonprofit does business.
- (g) In addition to the general public, the Attorney General shall notify any person that has requested in writing a notice of the filing.⁴

SECTION 4: Public Records

- (a) The Attorney General shall provide access to all records filed pursuant to Section 3(a) concerning the proposed conversion to the public at no cost. The records shall be considered public records and be made available at both the Attorney General's office and the office of the nonprofit corporation as well as on the websites of the Attorney General and the nonprofit corporation.
- (b) The Attorney General may charge the transacting parties for the costs of providing the public with notice and reasonable access to records relating to the proposed conversion of the nonprofit corporation.

SECTION 5: Public Hearing

- (a) No later than forty five (45) days after the Attorney General has received notice from the nonprofit corporation of its proposed conversion pursuant to Section 3 of this Act, the Attorney General shall hold at least one initial public hearing in the service area of the nonprofit corporation which provides an opportunity for public testimony.
 - (1) In the review of a conversion of a nonprofit insurer, the Attorney General shall hold as many hearings as necessary in various parts of the state in order to ensure each community in the insurer's service area is provided an accessible opportunity to participate.
 - (2) In the review of a conversion of a nonprofit hospital, the number of public hearings that the Attorney General must hold shall correspond to the size of the community in the nonprofit's service area and the nature and value of the conversion to ensure that the community affected by the transaction has an opportunity to contribute in a hearing process.
 - (3) In the review of a conversion of a nonprofit insurer or a nonprofit hospital, at least one additional public hearing shall be conducted following the release of expert reports pursuant to Section 13 of this Act.

⁴ For HMOs, insurers, and other health plans with identifiable interested parties (such as subscribers), the Attorney General should require that notice of a proposed transaction be provided to such interested parties at the same time notice is provided to the public.

- (b) Any person may file written comments or exhibits for the hearing or may appear and make a statement at the hearing. Each party to the transaction must assure that at least one person representing the party is present at any public hearing that the Attorney General convenes.
- (c) At least twenty-one (21) days prior to the public hearing, the Attorney General shall provide written notice of the time and place of the hearing through publication in one or more newspapers of general circulation in the affected communities, to the board of supervisors of the county in which the facility is located, and to all those who requested notice of such transactions.
- (d) The Attorney General shall establish and maintain a summary of written and oral comments made in preparation for and at the public hearing, including all questions posed, and shall require answers of the appropriate parties. The summary and answers shall be filed in the office of the Attorney General and in the public library of the public library system for the community served by the nonprofit and a copy shall be made available at no charge upon request to the Attorney General.
- (e) As part of the public hearing process, the Attorney General shall solicit comments and input regarding the potential risks and benefits of the conversion on health access, services, and coverage pursuant to Section 11 of this Act.
- (f) The Attorney General shall have the power to subpoena additional information or witnesses, require and administer oaths, require sworn statements at any time prior to making a decision on an application and shall permit the inclusion of certain parties as intervenors in the review process pursuant to Section 7 of this Act.

SECTION 6: Application documents:

The transacting parties shall file an initial application pursuant to Section 3 of this Act which shall, at a minimum, include the following information with respect to each transacting party and to the proposed conversion:

- (a) A detailed summary of the proposed conversion;
- (b) Articles of incorporation and certificate of incorporation for both the nonprofit and the acquiror;
- (c) Bylaws and organizational charts for both the nonprofit and the acquiror;
- (d) Organizational structure for existing transacting parties and each partner, affiliate, parent, subsidiary or related corporate entity in which the acquiror or nonprofit has a twenty percent (20%) or greater ownership interest;
- (e) All documents, reports, meeting minutes and presentations relevant to the nonprofit corporation's Board of Directors' decision to propose a conversion.
- (f) Conflict of interest statements, policies and procedures;

- (g) Copies of audited income statements, balance sheets, and other financial statements for the past three (3) years for both the nonprofit and the acquiror where appropriate and to the extent they have been made public, audited interim financial statements and income statements together with detailed descriptions of the financing structure of the proposed conversion including equity contribution, debt restructuring, stock issuance, partnership interests, stock offerings and the like;
- (h) Copies of reports analyzing the proposed conversion during the past three (3) years including, but not limited to, reports by appraisers, accountants, investment bankers, actuaries and other experts;
- (i) Current, signed original conflict of interest forms from all officers, directors, trustees, senior management, chairpersons or department chairpersons on a form acceptable to the Attorney General;
- (j) Copies of all documents related to (a) identification of all charitable assets (b) accounting of all charitable assets for the past three (3) years; and (c) distribution of the charitable assets including, but not limited to, endowments, restricted, unrestricted and specific purpose funds as each relates to the proposed transaction;
- (k) A copy of the business plan proposed in the conversion including the five year profit goals and methods for achieving these goals through financial, operational and administrative management.
- (l) A description of the plan as to how the acquiror or new for profit corporation will provide community benefits and continued access to health insurance during the first three (3) years of operation;
- (m) Any other documents requested by the Attorney General.

SECTION 7: Intervention

- (a) The Attorney General shall allow any person with a significant interest in the outcome of a conversion proceeding to intervene as a party to the regulating entity's proceedings. Policyholders, consumer advocates, nonprofit organizations, and representatives of the community shall be considered persons with a significant interest. Any person whose significant interest is determined to be affected by the conversion may present evidence, examine and cross-examine witnesses and offer oral and written arguments and in connection with said process may conduct discovery proceedings in the same manner as is allowed in the superior court of this state. The intervenor will be permitted to address the relevant statutory issues and related matters that are the focus of the conversion proceedings. The specific intervention provisions of this Act shall control in the event of a conflict with the requirements of general state administrative law.
- (b) This Section does not limit the power of the Attorney General to consolidate parties with similar interests for the purpose of intervention.

- (c) Any final action by the Attorney General, pursuant to Section 2, shall be subject to judicial review by the court and any person adversely affected by the final agency decision may appeal said decision pursuant to Section 19 of this Act.

SECTION 8: Public Interest

The appropriate regulating entity may not approve a conversion unless the transacting parties filing the conversion application demonstrate the conversion is in the public interest.

SECTION 9: Review Criteria

Prior to approving a conversion, the Attorney General shall find that the conversion application meets all of the following requirements:

- (a) The terms and conditions of the conversion are fair and reasonable to the residents of the state, the public, recipients and potential recipients of services, the subscribers and/or policyholders of the nonprofit corporation, and the nonprofit corporation.
- (b) The conversion is in the public interest. A conversion is not in the public interest unless appropriate steps have been taken to safeguard the value of charitable assets pursuant to Section 10 of this Act and ensure that any proceeds of the conversion are irrevocably dedicated to charitable health purposes.
- (c) The fair market value, as defined in Section 1 of this Act, of the nonprofit corporation's assets has not been manipulated by the actions of the parties in a manner that causes the fair market value of the assets to decrease.
- (d) The conversion will not result in direct or indirect inurement to any private person or entity, including stock options, agreements not to compete, and other private benefits.
- (e) The conversion will not result in any immediate or future remuneration to an official director or trustee of the nonprofit as the result of a conversion governed by this Act except in the form of compensation paid for continued employment with the acquiring entity.
- (f) The conversion does not create or have the likelihood of creating an adverse effect on the quality, availability and affordability of health services to the affected community and sufficient safeguards are included to assure or increase health access to the affected community (as described in Section 11).
- (g) The conversion will not result in the decrease or elimination of essential services and health care coverage for the community.

- (h) The nonprofit corporation proposing the conversion used due diligence in selecting the acquiror or in deciding to convert to a for profit corporation and negotiating the terms and conditions of the conversion or similarly disposing of its assets.
- (i) The nonprofit formulated and issued appropriate requests for proposals in pursuing a conversion.
- (j) In deciding to pursue a conversion, the nonprofit met its fiduciary duty by establishing and following a process appropriate for the nonprofit's mission and purposes.
- (k) The nonprofit considered the proposed conversion as the only alternative or as the best alternative to carry out its mission and purposes.
- (l) The transacting parties have addressed the issue of maintaining employment levels at the nonprofit following the completion of the transaction.
- (m) That an agreement between the transacting parties, requiring a payment by the nonprofit if the agreement or contract for the transaction is broken by the nonprofit, is in the public interest.
- (n) That an agreement between the transacting parties does not restrict the nonprofit's ability to continue to solicit conversion proposals from other entities.
- (o) The contract between the transacting parties does not include an expiration date by which the conversion must be completed or the contract will be void.
- (p) Any conflicts of interest are disclosed, including, but not limited to, conflicts of interest relating to board members and executives of the nonprofit and experts retained by the parties to the transaction.
- (q) A charitable trust shall be set aside equal to the fair market value of the nonprofit corporation pursuant to Section 12 of this Act.⁵ The Attorney General may permit all or a portion of the consideration conveyed to the charitable organization to consist of stock in the for-profit corporation.
- (r) Any other requirements the Attorney General deems necessary to determine if the proposed transaction is in the public interest.

SECTION 10: Protection of Charitable Assets

- (a) The charitable trust distribution shall be distributed to either an existing or new tax-exempt charitable organization operating pursuant to 26 U.S.C.A. Sec. 501(c)(3) or 501(c)(4) of the

⁵ For nonprofit corporations that mutualize, the fair market value of the nonprofit should be appropriately valued and held in trust by the mutual. The Attorney General shall retain jurisdiction of the enforcement of the charitable trust and ensure that the assets are used for charitable purposes when demutualization takes place or when sufficient surplus/capital is generated to fulfill the charitable trust. See Section 14 of this Act.

federal Internal Revenue Code. In either instance, whether or not the charitable organization is classified as a private foundation under 509 of the Internal Revenue Code, it shall be subject to the restrictions and limitations that apply to private foundations found in Sections 4941 through 4945 of the Code.

- (b) Any nonprofit charitable organization receiving the charitable assets, its directors, officers, and staff shall be and remain independent of the resulting for profit or the acquiror and its affiliates. No person who is an officer, director, or staff member of the converting nonprofit corporation submitting the conversion application, at the time said application is submitted, or at the time of the conversion, or thereafter, shall be qualified to be an officer, director or staff member of the charitable organization receiving the charitable assets. No director, officer, agent or employee of the nonprofit corporation submitting the conversion application or the charitable organization receiving the charitable assets, shall benefit directly or indirectly from the conversion. No person holding public office, whether elected or appointed, shall be qualified to be an officer or director of the charitable organization receiving the charitable assets.
- (c) The charitable organization receiving the charitable assets must establish formal mechanisms to avoid conflicts of interest and to prohibit grants benefiting the board of directors and management of the resulting for profit or the acquiror as well as grants benefiting said for profit or acquiror.
- (d) The charitable mission and grantmaking functions of the charitable organization receiving the charitable trust assets shall be dedicated to serving the converting nonprofit corporation's service area and will be committed to unmet health needs, particularly with regard to medically uninsured and underserved populations and shall focus on improving health, including improving access to services, enhancing quality of care, and addressing prevention and health promotion in said service area.
- (e) The governance of the charitable organization receiving the charitable trust assets shall be broadly based in the affected community in the nonprofit corporation's service area as identified pursuant to subsection (d) of this Section. . Clear criteria for the governing board members of the charitable organization shall be established, which shall include but not be limited to a demonstrated commitment to the mission of the charitable organization and the ability to further its charitable purposes. Said board members shall be selected such that as a whole they represent the diversity of the affected community.
- (f) The Attorney General shall establish a Community Advisory Committee for the charitable organization whose members shall be selected in a manner such that as a whole they represent the diversity of the affected community. The purpose of said Community Advisory Committee shall be to:
 - (1) Provide a slate of three nominees for each governing board vacancy, from which the remaining board members shall select new members;

- (2) Provide guidance to the board on the health needs of the affected community; and
 - (3) Promote dialogue and information sharing between the charitable organization and the affected community as defined in subsection (d) of this Section.
- (g) Members of the governing board and Community Advisory Committee shall adhere to term limits wherein no member shall serve more than two consecutive three-year terms. Member terms shall be staggered into three distinct classes in order that one third of the membership shall be eligible for reappointment or replacement each year.
- (h) The charitable organization shall provide the Attorney General with an annual report of its grantmaking and other charitable activities related to its use of the charitable assets received. The annual report shall be made available to the public at both the Attorney General's office and the office of the charitable organization.
- (i) The Attorney General shall retain oversight and monitoring authority over the charitable corporation that receives the proceeds of a proposed transaction.

SECTION 11: Health Impact Study

- (a) In reviewing a conversion application, the Attorney General shall determine the effect the proposed transaction will have on the quality, availability and accessibility of health care services to the affected community and the for-profit's ability to maintain and improve health access, quality of services, and coverage.
- (b) The transacting parties must submit a health impact plan that outlines how the for-profit corporation will ensure that health access, services, and coverage will not be harmed by the proposed conversion. At a minimum, such plan shall include the following:
- (1) In the conversion of a nonprofit hospital:
 - (i) An annual commitment to free care.⁶
 - (ii) A detailed description of free care policies and how they will be applied.
 - (2) In the conversion of a nonprofit hospital or health insurer:
 - (i) A plan describing the financial commitment and process for identification and provision of services to the community.
 - (ii) A description of the governance structure of the new entity.
 - (iii) A business plan proposed in the conversion including the five-year profit goals and methods for achieving these goals through financial, operational and administrative management.

⁶ Bad debt should not be considered "free care" or "indigent care" for purposes of the requirements of this Act. For more information, please contact Community Catalyst.

- (c) In the conversion of a nonprofit health insurer, the transacting parties must submit a comparative premium rate analysis of the nonprofit's and the acquiror's major plans and product offerings, comparing actual premium rates for the three-year period prior to the filing of the plan and projected premium rates for the three-year period following any proposed conversion.
- (d) The Attorney General shall review the health impact plan submitted by the transacting parties. To facilitate the review, the Attorney General shall conduct an independent community health impact study to ensure that the health impact plan submitted by the parties meets the needs of the affected community. The Attorney General's independent study process must:
 - (1) Involve, in a systematic fashion, affected community members, their representatives, and individuals to assess community health needs. This process shall include interviewing members of the community and/or their representatives.
 - (2) In the review of a conversion application of a nonprofit hospital the health impact study shall determine the level, quality, and importance to the community of health services and coverage that the nonprofit has historically provided, including but not limited to, indigent care, emergency room services, outpatient services, community education and training, prevention programs, and innovative health care programs.
 - (3) In the review of a conversion application for a nonprofit health insurer the health impact study shall determine the level, quality and importance of the insurance coverage that the nonprofit has historically provided and a comparison with the proposed conversion application's commitments to provide services in the future. Said study shall also include but not be limited to the review of all of the products provided by both of the transacting parties and an analysis of the anticipated changes including, the premiums, underwriting and medical loss ratios, enrollment and policies, Medicaid and Medicare participation, services and benefits.
 - (4) In the conversion of both nonprofit hospitals and nonprofit insurers, identify the services that the for-profit is likely to eliminate or reduce following the conversion and the affect the conversion will have on other facilities and community health centers in the same service area as the converting entity.
- (e) As part of the public hearing conducted pursuant to Section 5, the Attorney General shall solicit comments and input regarding the potential risks and benefits of the conversion on health access, services, and coverage. If a public hearing has already been held prior to the completion of the health impact study, the Attorney General shall hold a subsequent hearing specifically to address the study pursuant to Section 5(a)(3) of this Act.

- (f) Before approving the transaction, the Attorney General shall require that sufficient safeguards are in place to ensure the affected community has continued or increased access to affordable care.
- (g) Before approving the transaction, the Attorney General, in consultation with the independent expert responsible for the health impact study, shall require a written and legally enforceable commitment from the resulting for profit or the acquiror to maintain and/or improve the level of health services and coverage to the community and the public as determined by the study and the public hearing. The commitment must address any deficiencies or shortcomings identified by the Attorney General through the independent health impact study process. The Attorney General shall consult with the appropriate state regulators with licensing authority to review the final plan from the resulting for profit or the acquiror. The final plan shall include, but not be limited to, the following:
 - (1) In the review of a conversion application for a nonprofit hospital, a long term commitment to maintain the same level or increased level of indigent care services that the converting nonprofit has provided on average over the past ten years.
 - (2) In the review of a conversion application for a nonprofit insurer, commitments to preserve essential community services and coverage for otherwise uninsured or high risk individuals.
- (h) The Attorney General shall assess any change in local representation in the for profit or the acquiror corporation's governance structure post-conversion and require that a certain number of consumers or community members are included in said governance structure.
- (i) If after the completion of the conversion, the for profit or the acquiror eliminates or reduces any essential community service, the for profit or the acquiror shall present a plan to the Attorney General and the regulator who holds licensing authority detailing how the service will otherwise be provided, how the need for the service will otherwise be met, or that the need for such service no longer exists or has diminished to the extent to allow for the reduction in the essential community service as identified in the health impact study. The for-profit or the acquiror shall submit to the process established by the licensing authority to review the proposed reduction or elimination of the essential service. If the Attorney General has reason to believe the for profit or the acquiror is not meeting its commitments to provide essential services as included in the conversion agreement the Attorney General shall act pursuant to Section 15(b) of this Act.
- (j) The for profit or the acquiror shall submit an annual report to the regulator that holds licensing authority describing how it has fulfilled its commitments under subsection (h) of this Section. If the regulator determines the for profit or the acquiror is not meeting its commitments, the regulator shall notify the Attorney General, and the Attorney General shall take action pursuant to Section 16 of this Act.

SECTION 12: Valuation

The Attorney General shall do the following:

Require that the nonprofit corporation receives full fair market value, as defined in this Act, for its assets. The nonprofit shall be required to conduct an independent valuation of its assets. The Attorney General shall utilize an independent expert to conduct a separate independent valuation unless the Attorney General determines there is a significant reason not to conduct an independent review, then said expert shall review the valuation conducted by the transacting parties.

SECTION 13: Experts

The Attorney General shall do the following:

- (a) Contract with, consult, and receive advice from any state agency on those terms and conditions that the Attorney General deems appropriate.
- (b) Contract with experts or consultants to assist in reviewing the proposed conversion. Contract costs shall not exceed an amount that is reasonable and necessary. Reports compiled by said experts shall be made available to the public. The Attorney General shall charge the parties submitting the proposed conversion for the cost of expert consultants.
- (c) The AG may contract with experts to:
 - (1) determine whether to approve a conversion.
 - (2) determine whether there has been due diligence by the nonprofit corporation.
 - (3) determine the existence of any conflicts of interest.
 - (4) determine the appropriate method for protecting the charitable assets.
 - (5) determine the affect the proposed transaction will have on the quality, availability and accessibility of health care services in accordance with Section 11 of this Act.
 - (6) determine the valuation of the nonprofit pursuant to Section 12 of this Act.

SECTION 14: Mutualization⁷

- (a) Where a nonprofit corporation with a charitable trust mutualized prior to the effective date of this Act, the Attorney General shall immediately apply the following conditions:

⁷ States may have to amend their mutualization and demutualization statutes to reflect these provisions.

- (1) Any nonprofit corporation, which has converted into a mutual company, retains a charitable trust obligation to preserve its assets for charitable purposes. This obligation shall be paid by the mutual any time the mutual company proposes to convert to a for-profit corporation or generates sufficient funds to fulfill its charitable trust obligation. The fair market value of the nonprofit corporation on the date of conversion to a mutual company, augmented by any increase in value of the mutual company 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, consistent with Section 12 of this Act.
- (2) A mutual corporation which enters into any agreement or transaction with a nonprofit corporation acquires and retains a charitable trust obligation to preserve the assets of the nonprofit corporation for charitable purposes. This obligation shall be paid any time the mutual company proposes to convert to a for-profit corporation. The fair market value of the nonprofit corporation on the date of conversion to a mutual company, augmented by any increase in value of the mutual company 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, consistent with Section 12 of this Act.
- (3) If the mutual corporation enters into an agreement or transaction to demutualize, it shall submit an asset distribution plan to fulfill its charitable obligations, consistent with the requirements under Section 10 of this Act. The Attorney General shall hold public hearings consistent with Section 5 of this Act. No agreement or transaction of a mutual company to demutualize shall occur until the Attorney General consents to such plan as fair and equitable to the public and follows all provisions of this Act.

SECTION 15: Joint Ventures

- (a) If the nonprofit does not wholly convert to for-profit but affiliates with a for profit corporation in the form of a joint venture and the nonprofit continues to be incorporated and do business as a nonprofit corporation, the Attorney General shall require it to submit an annual report that identifies the activities to be undertaken by the nonprofit to meet its public benefit and community benefit obligations.
- (b) The Attorney General shall retain oversight and monitoring authority over the surviving nonprofit to ensure that it fulfills its nonprofit mission.

SECTION 16: Continued Monitoring

- (a) Hospital Health Care Monitor.

- (1) Following the approval of the conversion, the for profit or the acquiror, if determined to be necessary by the regulating entity⁸, shall provide funds, in an amount determined by said regulating entity, to be used by the regulating entity to contract with an independent health care access monitor to study and report quarterly on community health care access by the converted entity, including access to care for indigent persons. The funding shall be provided for three years after the date of the conversion. The entity acquiring the nonprofit hospital or nonprofit insurer shall provide the monitor with appropriate access to the entity's records in order to enable the monitor to fulfill this function.
- (2) To prevent the duplication of any information already reported by the for profit or acquiror, the monitor shall, to the extent possible, utilize data already provided by said entity to the Department.
- (3) No personal identifiers shall be attached to any of the records obtained by the monitor, and all such records shall be subject to the privacy and confidentiality provisions of medical records provided by law.

(a) Commitment Monitor.

If the Attorney General receives information indicating that the for-profit or the acquiror is not fulfilling its commitments to the affected community under this Act, the Attorney General shall hold a public hearing upon ten days notice to the affected parties and consistent with the public hearing requirements of Section 5 of this Act. If, after such hearing, the Attorney General determines that the information is true, it shall institute proceedings to require a corrective action plan from the for profit or the acquiror. The Attorney General shall retain oversight of the acquiror's obligations under the corrective action plan for as long as necessary to ensure compliance with this Act.

SECTION 17: Penalties

- (a) Any conversion entered into in violation of this Act or commitments made pursuant to this Act shall be null and void and each member of the governing boards and the chief financial officers of the transacting parties shall be subject to a civil penalty of up to \$1,000,000, the amount to be determined by the court in the county in which the nonprofit assets are located. The Attorney General shall institute proceedings to impose such a penalty.
- (b) The state shall not issue or renew a permit or license to operate a nonprofit health provider, as defined under Section 1, if the nonprofit proceeds with a conversion in violation of the notice, review, and approval requirements of this Act.

⁸ The relevant departments may have different names depending on the state.

SECTION 18: Attorney General Authority

Nothing in this Act shall be construed to limit the common law authority of the Attorney General to protect charitable trusts and charitable assets. The penalties and remedies are in addition to, and not a replacement for, any other civil or criminal actions that the Attorney General may undertake under common law or statutory law.

SECTION 19: Standing

Any final action by the Attorney General, pursuant to Section 2, shall be subject to judicial review by the court at the initiation of the nonprofit corporation or any person that was a party to the agency proceeding. Any person adversely affected by the final agency decision and any person who filed a written comment or exhibit or appeared and made a statement in the public hearing held by the Attorney General pursuant to subsection 5 of this Act shall be considered a party to the proceeding, including consumers or community groups representing the citizens of the state.

SECTION 20: Emergency Act

Since an emergency exists, this Act takes effect when passed and approved according to law.