

By: Representative Holland

To: Public Health and  
Welfare

## HOUSE BILL NO. 1337

1 AN ACT RELATING TO NONPROFIT HEALTH CARE CONVERSION  
2 TRANSACTIONS, WHICH IS THE TRANSFER OF THE ASSETS, OPERATIONS OR  
3 CONTROL OF A NONPROFIT HEALTH CARE ENTITY TO AN ENTITY OR PERSON  
4 OTHER THAN A CHARITY; TO REQUIRE NONPROFIT HEALTH CARE ENTITIES TO  
5 PROVIDE WRITTEN NOTICE TO, AND OBTAIN THE APPROVAL OF, THE  
6 ATTORNEY BEFORE ENTERING INTO ANY NONPROFIT HEALTH CARE  
7 TRANSACTION; TO PROVIDE FOR A PUBLIC MEETING TO HEAR COMMENTS FROM  
8 INTERESTED PERSONS BEFORE THE ATTORNEY GENERAL MAKES HIS DECISION  
9 ON APPROVAL OF A PROPOSED NONPROFIT HEALTH CARE TRANSACTION; TO  
10 SPECIFY THE ELEMENTS THAT THE ATTORNEY GENERAL MUST CONSIDER  
11 BEFORE MAKING HIS DECISION ON APPROVAL OF A PROPOSED NONPROFIT  
12 HEALTH CARE TRANSACTION; TO AUTHORIZE THE ATTORNEY GENERAL TO  
13 ADOPT ANY NECESSARY REGULATIONS TO IMPLEMENT THIS ACT; TO  
14 AUTHORIZE THE ATTORNEY GENERAL TO REQUIRE ANY NONPROFIT HEALTH  
15 CARE ENTITY PROPOSING A NONPROFIT HEALTH CARE TRANSACTION TO  
16 PROVIDE SUCH INFORMATION AS THE ATTORNEY GENERAL DEEMS NECESSARY  
17 TO COMPLETE HIS REVIEW OF THE TRANSACTION; TO AUTHORIZE THE  
18 ATTORNEY GENERAL TO CONTRACT WITH STATE OR FEDERAL AGENCIES AND  
19 WITH EXPERTS AND CONSULTANTS TO ASSIST IN MAKING HIS REVIEW; TO  
20 AUTHORIZE THE ATTORNEY GENERAL TO REQUIRE THE NONPROFIT HEALTH  
21 CARE ENTITY PROPOSING THE NONPROFIT HEALTH CARE TRANSACTION TO  
22 REIMBURSE THE ATTORNEY GENERAL FOR ALL COSTS INCURRED IN REVIEWING  
23 THE TRANSACTION; TO PROVIDE FOR PENALTIES FOR VIOLATIONS OF THIS  
24 ACT; AND FOR RELATED PURPOSES.

25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

26 SECTION 1. As used in this act:

27 (a) "Nonprofit health care entity" means any nonprofit  
28 hospital (including corporations and hospitals created under a  
29 trust or a will), nonprofit health maintenance organization (HMO)  
30 or nonprofit health care insurer, including entities affiliated  
31 with any of these through ownership, governance or membership,  
32 such as a holding company or subsidiary. Nonprofit health care  
33 entity shall include, but not be limited to nonprofit entities  
34 that are licensed as hospitals, health maintenance organizations,  
35 (HMO) or health care insurers (including mutual corporations  
36 holding assets in charitable trust) under the laws of this state.

37 (b) "Nonprofit health care conversion transaction"

38 means:

39 (i) The sale, transfer, lease, exchange,  
40 optioning, conveyance, or other disposition of a material amount  
41 of the assets or operations of a licensed nonprofit hospital,  
42 nonprofit health maintenance organization or nonprofit health care  
43 insurer, including a mutual corporation holding assets in  
44 charitable trust, to an entity or person other than a charity; and

45 (ii) The transfer of control or governance of a  
46 material amount of the assets or operations of a licensed  
47 hospital, nonprofit health maintenance organization or nonprofit  
48 health care insurer, including a mutual corporation holding assets  
49 in charitable trust, to an entity or person other than a charity.

50 (c) "Nonprofit health care insurer" means any nonprofit  
51 provider of health care insurance, including hospital service  
52 associations, health service corporations, and physician service  
53 organizations, such as Blue Cross and Blue Shield plans.

54 (d) "Person" means any individual, partnership, trust,  
55 estate, corporation, association, joint venture, joint stock  
56 company, insurance company, or other organization.

57 SECTION 2. (1) Any nonprofit health care entity shall be  
58 required to provide written notice to, and obtain the approval of,  
59 the Attorney General, before entering into any nonprofit health  
60 care conversion transaction. At the time of providing notice to  
61 the Attorney General, the nonprofit health care entity shall  
62 provide the Attorney General with written certification that a  
63 copy of this act has been given in its entirety to each member of  
64 the board of trustees of the nonprofit health care entity.

65 (2) The notice to the Attorney General provided for in this  
66 section shall include and contain all the information that the  
67 Attorney General determines is required. No notice shall be  
68 effective until the Attorney General has acknowledged receipt of a  
69 complete notice in accordance with regulations adopted under  
70 Section 6 of this act or in accordance with protocol establish by

71 the Attorney General.

72 (3) This act shall not apply to a nonprofit health care  
73 entity if the nonprofit health care conversion transaction is in  
74 the usual and regular course of its activities and if the Attorney  
75 General has given the nonprofit health care corporation a written  
76 waiver of this act as to the nonprofit health care conversion  
77 transaction.

78 SECTION 3. Within ninety (90) days of a complete written  
79 notice as required by Section 2 of this act, the Attorney General  
80 shall notify the nonprofit health care entity in writing of its  
81 decision to approve or disapprove the proposed nonprofit health  
82 care conversion transaction. The Attorney General may extend this  
83 period for an additional sixty-day period, provided the extension  
84 is necessary to obtain information pursuant to Section 6(2) or  
85 Section 7(1) of this act.

86 SECTION 4. Before issuing any written decision under Section  
87 3 of this act, the Attorney General shall conduct one or more  
88 public meetings, one (1) of which shall be held in the county  
89 where the nonprofit health care entity's assets to be transferred  
90 are located. At the public meeting, the Attorney General shall  
91 hear comments from interested persons desiring to make statements  
92 regarding the proposed nonprofit health care conversion  
93 transaction. AT least fourteen (14) days before the meeting, the  
94 Attorney General shall cause written notice to be provided of the  
95 time and place of the meeting through publication in one or more  
96 newspapers of general circulation in the affected community, to  
97 the county board of supervisors, and if applicable, to the city  
98 council of the city where the nonprofit health care entity's  
99 assets to be transferred are located.

100 SECTION 5. (1) In making a decision whether to approve or  
101 disapprove a proposed nonprofit health care conversion  
102 transaction, the Attorney General shall consider:

103 (a) Whether the nonprofit health care entity will

104 receive full and fair market value for its charitable or social  
105 welfare assets;

106 (b) Whether the fair market value of the nonprofit  
107 health care entity's assets to be transferred has been manipulated  
108 by the actions of the parties in a manner that causes the fair  
109 market value of the assets to decrease;

110 (c) Whether the proceeds of the proposed nonprofit  
111 health care conversion transaction will be used consistent with  
112 the trust under which the assets are held by the nonprofit health  
113 care entity and whether the proceeds will be controlled as funds  
114 independently of the acquiring or related entities;

115 (d) Whether the proposed nonprofit health care  
116 conversion transaction will result in a breach of fiduciary duty,  
117 as determined by the Attorney General, including conflicts of  
118 interest related to payments or benefits to officers, directors,  
119 board members, executives, and experts employed or retained by the  
120 parties;

121 (e) Whether the governing body of the nonprofit health  
122 care entity exercised due diligence in deciding to dispose of  
123 nonprofit health care entity's assets, selecting the acquiring  
124 entity, and negotiating the terms and conditions of the  
125 disposition;

126 (f) Whether the nonprofit health care conversion  
127 transaction will result in private inurement to any person;

128 (g) Whether health care providers will be offered the  
129 opportunity to invest or own an interest in the acquiring entity  
130 or a related party, and whether procedures or safeguards are in  
131 place to avoid conflict of interest in patient referrals;

132 (h) Whether the terms of any management or services  
133 contract negotiated in conjunction with the proposed nonprofit  
134 health care conversion transaction are reasonable;

135 (i) Whether any foundation established to hold the  
136 proceeds of the sale will be broadly based in the community and be

137 representative of the affected community, taking into  
138 consideration the structure and governance of the foundation;

139 (j) Whether the Attorney General has been provided with  
140 sufficient information and data by the nonprofit health care  
141 entity to evaluate adequately the proposed nonprofit health care  
142 conversion transaction or the effects of the transaction on the  
143 public, provided the Attorney General has notified the nonprofit  
144 health care entity or the acquiring entity of any inadequacy of  
145 the information or data and has provided a reasonable opportunity  
146 to remedy that inadequacy; and

147 (k) Any other criteria that the Attorney General  
148 considers necessary to determine whether the nonprofit health care  
149 entity will receive full and fair market value for its assets to  
150 be transferred as required in rules adopted by the Attorney  
151 General under Section 6 of this act.

152 (2) In making a decision whether to approve or disapprove an  
153 application, the Attorney General also shall determine whether the  
154 proposed nonprofit health care conversion transaction may have a  
155 significant effect on the availability or accessibility of health  
156 care services to the affected community. In making this  
157 determination, the Attorney General shall consider:

158 (a) Whether sufficient safeguards are included to  
159 assure the affected community continued access to affordable care;

160 (b) Whether the proposed nonprofit health care  
161 conversion transaction creates or has the likelihood of creating  
162 an adverse effect on the access to or availability or cost of  
163 health care services to the community;

164 (c) Whether the acquiring entities have made a  
165 commitment, at least comparable to the nonprofit health care  
166 entity, to provide health care to the disadvantaged, the  
167 uninsured, and the underinsured and to provide benefits to the  
168 affected community to promote improve health care. Activities and  
169 funding provided by the nonprofit health care entity or its

170 successor nonprofit health care entity or foundation to provide  
171 that health care or to provide support or medical education and  
172 teaching programs or medical research programs shall be considered  
173 in evaluating compliance with this commitment;

174 (d) Whether the nonprofit health care conversion  
175 transaction will result in the revocation of hospital privileges;

176 (e) Whether sufficient safeguards are included to  
177 maintain appropriate capacity for health science research and  
178 health care provider education; and

179 (f) Whether the proposed nonprofit health care  
180 conversion transaction demonstrates that the public interest will  
181 be served considering the essential medical services needed to  
182 provide safe and adequate treatment, appropriate access and  
183 balanced health care delivery to the residents.

184 SECTION 6. (1) The Attorney General may adopt such  
185 regulations as he or she deems appropriate to implement this act  
186 and/or establish such protocols as are necessary to implement this  
187 act.

188 (2) The Attorney General may demand that the nonprofit  
189 health care entity giving notice under Section 2 of this act  
190 provide such information as the Attorney General reasonably deems  
191 necessary to complete his or her review of any proposed nonprofit  
192 health care conversion transaction described in Section 5 of this  
193 act. A failure by the nonprofit health care entity giving notice  
194 under Section 2 of this act to provide timely information as  
195 required by the Attorney General shall be a sufficient ground for  
196 the Attorney General to disapprove the proposed nonprofit health  
197 care conversion transaction.

198 SECTION 7. (1) Within the time periods designated in  
199 Section 3 of this act, the Attorney General may do any of the  
200 following to assist in the review of the proposed nonprofit health  
201 care conversion transaction described in Section 2 of this act:

202 (a) Contract with, consult and receive advice from any

203 agency of this state or the United States on such terms and  
204 conditions that the Attorney General deems appropriate; or

205 (b) In the Attorney General's sole discretion, contract  
206 with such experts or consultants that the Attorney General deems  
207 appropriate to assist him or her in reviewing the proposed  
208 nonprofit health care conversion transaction.

209 (2) Any contract costs incurred by the Attorney General  
210 under this section shall not exceed an amount that is reasonable  
211 and necessary to conduct the review of the proposed nonprofit  
212 health care conversion transaction. The Attorney General shall be  
213 exempt from the provisions of any applicable state laws regarding  
214 public bidding procedures for purposes of entering into contracts  
215 under this section. The nonprofit health care entity giving  
216 notice under Section 2 of this act, upon request, shall pay the  
217 Attorney General promptly for all costs of contracts entered into  
218 by the Attorney General under this section.

219 (3) The Attorney General shall be entitled to reimbursement  
220 from the nonprofit health care entity giving notice under Section  
221 2 of this act for all reasonable and actual costs incurred by the  
222 Attorney General in reviewing any proposed nonprofit health care  
223 conversion transaction under this act, including attorney's fees  
224 at the billing rate used by the Attorney General to bill state  
225 agencies for legal services. The nonprofit health care entity  
226 giving notice under Section 2 of this act, upon request, shall pay  
227 the Attorney General promptly for all those costs.

228 (4) The failure by the nonprofit health care entity giving  
229 notice under Section 2 of this act to promptly reimburse the  
230 Attorney General for all costs as provided under subsections (2)  
231 or (3) of this section shall be sufficient ground for the Attorney  
232 General to disapprove the proposed nonprofit health care  
233 conversion transaction.

234 SECTION 8. All documents submitted to the Attorney General  
235 by any person, including nonprofit health care entities giving

236 notice under Section 2 of this act, in connection with the  
237 Attorney General's review of the proposed nonprofit health care  
238 conversion transaction under this act shall be public records  
239 subject to all provisions of the Mississippi Public Records Act of  
240 1983.

241       SECTION 9. (1) Any nonprofit health care conversion  
242 transactions entered into in violation of the notice, review or  
243 approval requirements of this act shall be null and void and each  
244 member of the governing boards and the chief financial officers of  
245 the parties to the nonprofit health care conversion transaction  
246 may be subject to a civil penalty of up to One Million Dollars  
247 (\$1,000,000.00), the amount to be determined by the court of  
248 competent jurisdiction in the county in which the nonprofit health  
249 care entity's assets to be transferred are located. The Attorney  
250 General shall institute proceedings to impose such a penalty. In  
251 addition, no permit to operate a hospital may be issued or renewed  
252 under any applicable statute or regulation if there is a nonprofit  
253 health care conversion transaction entered into in violation of  
254 the notice, review and approval requirements of this act.

255       (2) Nothing in this section shall be construed to limit the  
256 common law authority of the Attorney General and the director of  
257 charitable trust to protect charitable trust and charitable assets  
258 in this state. These penalties and remedies are in addition to,  
259 and not a replacement for, any other civil or criminal actions  
260 that the Attorney General may take under either the common law or  
261 statutory law, including rescinding the nonprofit health care  
262 conversion transaction, granting injunctive relief or any  
263 combination of these and other remedies available under common law  
264 or statutory law.

265       SECTION 10. This act shall take effect and be in force from  
266 and after July 1, 1999.