

By: Senator(s) Ferris

To: Public Health and
Welfare; Judiciary

SENATE BILL NO. 2930

1 AN ACT TO PROVIDE FOR A REVIEW OF NONPROFIT HEALTH CARE
2 PROVIDER CONVERSION TRANSACTIONS BY THE OFFICE OF ATTORNEY
3 GENERAL, AND TO PROVIDE THAT THIS REVIEW AND APPROVAL SHALL BE A
4 PREREQUISITE FOR LICENSURE OF THE FACILITY; TO PRESCRIBE
5 PROCEDURES FOR THE REVIEW, INCLUDING NOTICE, PUBLIC MEETINGS,
6 REVIEW ELEMENTS AND RULEMAKING AUTHORITY OF THE ATTORNEY GENERAL
7 IN CONDUCTING SUCH REVIEWS; TO AUTHORIZE THE ATTORNEY GENERAL TO
8 CONTRACT WITH OTHER ENTITIES; TO AUTHORIZE THE ATTORNEY GENERAL TO
9 ASSESS SUCH NONPROFIT HEALTHCARE PROVIDERS FOR THE COSTS OF
10 REVIEW; TO PRESCRIBE PENALTIES; TO AMEND SECTION 41-9-11,
11 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED
12 PURPOSES.

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

14 SECTION 1. **Definitions.**

15 For purposes of this act:

16 (a) "Nonprofit healthcare entity" means any nonprofit
17 hospital (including corporations and hospitals created under a
18 trust or a will), nonprofit health maintenance organization, or
19 nonprofit healthcare insurer, including entities affiliated with
20 any of these through ownership, governance or membership, such as
21 a holding company or subsidiary. Nonprofit healthcare entity
22 shall include, but not be limited to, nonprofit entities which are
23 licensed as hospitals, HMO's or healthcare insurers (including
24 mutual corporations holding assets in charitable trust) under the
25 laws of this state.

26 (b) "Nonprofit healthcare conversion transaction"
27 means:

28 (i) The sale, transfer, lease, exchange,
29 optioning, conveyance or other disposition of a material amount of
30 the assets or operations of a licensed nonprofit hospital,
31 nonprofit health maintenance organization or nonprofit healthcare

32 insurer, including a mutual corporation holding assets in
33 charitable trust, to an entity or person other than a charity; and

34 (ii) The transfer of control or governance of a
35 material amount of the assets or operations of a licensed
36 hospital, nonprofit health maintenance organization or nonprofit
37 healthcare insurer, including a mutual corporation holding assets
38 in charitable trust, to an entity or person other than a charity.

39 (c) "Nonprofit healthcare insurer" means any nonprofit
40 provider of healthcare insurance, including hospital service
41 associations, health service corporations and physician service
42 organizations, such as Blue Cross Blue Shield plans.

43 (d) "Person" means any individual, partnership, trust,
44 estate, corporation, association, joint venture, joint stock
45 company, insurance company or other organization.

46 **SECTION 2. Notice to and approval of Attorney General.**

47 (1) Any nonprofit healthcare entity shall be required to
48 provide written notice to, and obtain the approval of, the
49 Attorney General prior to entering into any nonprofit healthcare
50 conversion transaction. At the time of providing notice to the
51 Attorney General, the nonprofit healthcare entity shall provide
52 the Attorney General with written certification that a copy of
53 this statute has been given in its entity to each member of the
54 board of trustees of the nonprofit healthcare entity.

55 (2) The notice to the Attorney General provided for in this
56 section shall include and contain all the information the Attorney
57 General determines is required. No notice shall be effective
58 until the Attorney General has acknowledged receipt of a complete
59 notice in accordance with regulations to be adopted pursuant to
60 Section 6 of this act or in accordance with protocol established
61 by the Attorney General.

62 (3) This act shall not apply to a nonprofit healthcare
63 entity if the nonprofit healthcare conversion transaction is in
64 the usual and regular course of its activities and if the Attorney
65 General has given the nonprofit healthcare corporation a written
66 waiver of this act as to the nonprofit healthcare conversion
67 transaction.

68 **SECTION 3. Approval or disapproval; written notice; time**

69 **period; extension.**

70 Within ninety (90) days of a complete written notice as
71 required by Section 2 of this act, the Attorney General shall
72 notify the nonprofit healthcare entity in writing of its decision
73 to approve or disapprove the proposed nonprofit healthcare
74 conversion transaction. The Attorney General may extend this
75 period for an additional sixty-day period, provided the extension
76 is necessary to obtain information pursuant to Section 6 or 7 of
77 this act.

78 SECTION 4. **Public meetings; notice of time and place.**

79 Prior to issuing any written decision pursuant to Section 3
80 of this act, the Attorney General shall conduct one or more public
81 meetings, one (1) of which shall be held in the county where the
82 nonprofit healthcare entity's assets to be transferred are
83 located. At the public meeting, the Attorney General shall hear
84 comments from interested persons desiring to make statements
85 regarding the proposed nonprofit healthcare conversion
86 transaction. At least fourteen (14) days before the meeting, the
87 Attorney General shall cause written notice to be provided of the
88 time and place of the meeting through publication in one or more
89 newspapers of general circulation in the affected community, to
90 the county board of supervisors and, if applicable, to the city
91 council of the city where the nonprofit healthcare entity's assets
92 to be transferred are located.

93 SECTION 5. **Discretion of Attorney General; review elements;**

94 (1) In making a decision whether to approve or disapprove a
95 proposed nonprofit healthcare conversion transaction, the Attorney
96 General shall consider:

97 (a) Whether the nonprofit healthcare entity will
98 receive full and fair market value for its charitable or social
99 welfare assets;

100 (b) Whether the fair market value of the nonprofit
101 healthcare entity's assets to be transferred has been manipulated

102 by the actions of the parties in a manner that causes the fair
103 market value of the assets to decrease;

104 (c) Whether the proceeds of the proposed nonprofit
105 healthcare conversion transaction will be used consistent with the
106 trust under which the assets are held by the nonprofit healthcare
107 entity and whether the proceeds will be controlled as funds
108 independently of the acquiring or related entities;

109 (d) Whether the proposed nonprofit healthcare
110 conversion transaction will result in a breach of fiduciary duty,
111 as determined by the Attorney General, including conflicts of
112 interest related to payments or benefits to officers, directors,
113 board members, executives and experts employed or retained by the
114 parties;

115 (e) Whether the governing body of the nonprofit
116 healthcare entity exercised due diligence in deciding to dispose
117 of nonprofit healthcare entity's assets, selecting the acquiring
118 entity, and negotiating the terms and conditions of the
119 disposition;

120 (f) Whether the nonprofit healthcare conversion
121 transaction will result in private inurement to any person;

122 (g) Whether healthcare providers will be offered the
123 opportunity to invest or own an interest in the acquiring entity
124 or a related party, and whether procedures or safeguards are in
125 place to avoid conflict of interest in patient referrals;

126 (h) Whether the terms of any management or services
127 contract negotiated in conjunction with the proposed nonprofit
128 healthcare conversion transaction are reasonable;

129 (i) Whether any foundation established to hold the
130 proceeds of the sale will be broadly based in the community and be
131 representative of the affected community, taking into
132 consideration the structure and governance of such foundation;

133 (j) Whether the Attorney General has been provided with
134 sufficient information and data by the nonprofit healthcare entity

135 to evaluate adequately the proposed nonprofit healthcare
136 conversion transaction or the effects thereof on the public,
137 provided the Attorney General has notified the nonprofit
138 healthcare entity or the acquiring entity of any inadequacy of the
139 information or data and has provided a reasonable opportunity to
140 remedy such inadequacy; and

141 (k) Any other criteria the Attorney General considers
142 necessary to determine whether the nonprofit healthcare entity
143 will receive full and fair market value for its assets to be
144 transferred as required in rules adopted by the Attorney General
145 under Section 6 of this act.

146 (2) In making a decision whether to approve or disapprove an
147 application, the Attorney General shall also determine whether the
148 proposed nonprofit healthcare conversion transaction may have a
149 significant effect on the availability or accessibility of
150 healthcare services to the affected community. In making this
151 determination, the Attorney General shall consider:

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

154 (b) Whether the proposed nonprofit healthcare
155 conversion transaction creates or has the likelihood of creating
156 an adverse effect on the access to or availability or cost of
157 healthcare services to the community;

158 (c) Whether the acquiring entities have made a
159 commitment, at least comparable to the nonprofit healthcare
160 entity, to provide healthcare to the disadvantaged, the uninsured
161 and the underinsured and to provide benefits to the affected
162 community to promote improved healthcare. Activities and funding
163 provided by the nonprofit healthcare entity or its successor
164 nonprofit healthcare entity or foundation to provide such
165 healthcare or to provide support or medical education and teaching
166 programs or medical research programs shall be considered in
167 evaluating compliance with this commitment;

168 (d) Whether the nonprofit healthcare conversion
169 transaction will result in the revocation of hospital privileges;

170 (e) Whether sufficient safeguards are included to
171 maintain appropriate capacity for health science research and
172 healthcare provider education; and

173 (f) Whether the proposed nonprofit healthcare
174 conversion transaction demonstrates that the public interest will
175 be served considering the essential medical services needed to
176 provide safe and adequate treatment, appropriate access and
177 balanced healthcare delivery to the residents.

178 **SECTION 6. Regulations; authority to adopt; information**
179 **requests; consequences of refusal to provide information.**

180 (1) The Attorney General may adopt such regulations as the
181 Attorney General deems appropriate to implement this act and/or
182 establish such protocols as are necessary to implement this act.

183 (2) The Attorney General may demand that the nonprofit
184 healthcare entity giving notice under Section 2 of this act
185 provides such information as the Attorney General reasonably deems
186 necessary to complete his/her review of any proposed nonprofit
187 healthcare conversion transaction described in Section 5 of this
188 act. A failure by the nonprofit healthcare entity giving notice
189 under Section 2 of this act to provide timely information as
190 required by the Attorney General shall be a sufficient ground for
191 the Attorney General to disapprove the proposed nonprofit
192 healthcare conversion transaction.

193 **SECTION 7. Contracts with agencies and consultants;**
194 **reimbursement for costs and expenses of review; failure to pay.**

195 (1) Within the time periods designated in Section 3 of this
196 act, the Attorney General may do any of the following to assist in
197 the review of the proposed nonprofit healthcare conversion
198 transactions described in Section 2 of this act:

199 (a) Contract with, consult and receive advice from the
200 State Department of Health or any agency of the state or the

201 United States on such terms and conditions the Attorney General
202 deems appropriate;

203 (b) In the Attorney General's sole discretion, contract
204 with such experts or consultants the Attorney General deems
205 appropriate to assist the Attorney General in reviewing the
206 proposed nonprofit healthcare conversion transaction; or

207 (c) Contract with the State Department of Health to
208 coordinate health care facility certificate of need review
209 proceedings relating to the transfer of hospital facilities in
210 order to avoid unnecessary duplication of review proceedings.

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

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

230 (4) The failure by the nonprofit healthcare entity giving
231 notice under Section 2 of this act to promptly reimburse the
232 Attorney General for all costs pursuant to subsections (2) or (3)
233 shall be sufficient ground for the Attorney General to disapprove

234 the proposed nonprofit healthcare conversion transaction.

235 SECTION 8. Public records.

236 All documents submitted to the Attorney General by any
237 person, including nonprofit healthcare entities giving notice
238 under Section 2 of this act, in connection with the Attorney
239 General's review of the proposed nonprofit healthcare conversion
240 transaction pursuant to this act shall be public records subject
241 to all provisions of the applicable state public records act.

242 SECTION 9. Penalties; remedies.

243 (1) Any nonprofit healthcare conversion transactions entered
244 into in violation of the notice, review or approval requirements
245 of this act shall be null and void and each member of the
246 governing boards and the chief financial officers of the parties
247 to the nonprofit healthcare conversion transaction may be subject
248 to a civil penalty of up to One Million Dollars (\$1,000,000.00),
249 the amount to be determined by the court of competent jurisdiction
250 in the county in which the nonprofit healthcare entity's assets to
251 be transferred are located. The Attorney General shall institute
252 proceedings to impose such a penalty. In addition, no license to
253 operate a hospital may be issued or renewed under Section 41-9-1
254 et seq., Mississippi Code of 1972, or under any other applicable
255 statute or regulation if there is a nonprofit healthcare
256 conversion transaction entered into in violation of the notice,
257 review and approval requirements of this act.

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

267 under common law or statutory law.

268 SECTION 10. Section 41-9-11, Mississippi Code of 1972, is
269 amended as follows:

270 41-9-11. Upon receipt of an application for license and the
271 license fee, the licensing agency shall issue a license if the
272 applicant and hospital facilities meet the requirements
273 established under Sections 41-9-1 through 41-9-35, and the
274 requirements of Section 41-7-173 et seq., and in the case of
275 nonprofit hospitals, the provisions of Senate Bill No. 2930, 1999
276 Regular Session, where determined by the licensing agency to be
277 applicable. A license, unless suspended or revoked, shall be
278 renewable annually, upon filing by the licensee, and approval by
279 the licensing agency of an annual report upon such uniform dates
280 and containing such information in such form as the licensing
281 agency prescribes by regulation and upon paying the annual fee for
282 such license as determined by the schedule and provisions of
283 Section 41-9-9. Each license shall be issued only for the
284 premises and persons or governmental units named in the
285 application and shall not be transferable or assignable except
286 with the written approval of the licensing agency. Licenses shall
287 be posted in a conspicuous place on the licensed premises.

288 SECTION 11. This act shall take effect and be in force from
289 and after July 1, 1999.