

# SENATE BILL No. 300

March 10, 2005, Introduced by Senators JACOBS, SCHAUER, BASHAM,  
HAMMERSTROM and PATTERSON and referred to the Committee on Health Policy.

A bill to regulate the conversion and acquisition of a nonprofit health care organization; to prescribe the powers and duties of certain state agencies and departments; to require the disclosure of certain information; to provide for a hearing under certain circumstances; and to prescribe penalties and remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. This act shall be known and may be cited as the  
2 "nonprofit health care organization conversion act".

3       Sec. 3. As used in this act:

4       (a) "Application" means an application for approval of a  
5 proposed conversion filed with the attorney general under this act.

6       (b) "Conversion" means any of the following:

7       (i) To sell, transfer, lease, exchange, option, convey,

1 convert, give, enter a joint venture, merge, or otherwise dispose  
2 of 20% or more of the assets of a nonprofit health care  
3 organization to a for-profit corporation or other entity or to a  
4 nonprofit corporation or nonprofit health care organization.

5 (ii) To transfer control, responsibility, or governance of 20%  
6 or more of the assets, operations, or business of a nonprofit  
7 health care organization to any for-profit corporation or other  
8 entity or any nonprofit corporation, nonprofit health care  
9 organization, or other entity.

10 (iii) To enter into a change of governance, ownership, or  
11 operational control that, when combined with 1 or more transactions  
12 occurring within a 5-year period, results in a change of  
13 governance, ownership, or operational control of 20% or more of the  
14 assets, operations, or business in any for-profit corporation,  
15 nonprofit corporation, nonprofit health care organization, or any  
16 other entity.

17 (c) "Department" means the department of community health.

18 (d) "Health services" means 1 or more of the following:

19 (i) Diagnosis and medical and surgical treatment by direct  
20 providers of health care of persons suffering from illness, injury,  
21 and disability, including persons suffering from tuberculosis and  
22 other contagious and infectious diseases, and persons requiring  
23 maternity care, rehabilitation, psychiatric care, or substance  
24 abuse services; dentistry and related services; podiatric medicine  
25 and surgery; optometric services; psychological services; skilled,  
26 basic, and visiting nursing services and home health services;  
27 ambulance operations; advanced mobile emergency care services and

1 limited advanced emergency services; physical, respiratory, and  
2 occupational therapy; health maintenance services; services for the  
3 prevention of illness, injury, and disability and for the  
4 promotion, maintenance, and improvement of public health and  
5 welfare; food services and care for dependent children, the  
6 disabled, and the elderly; and social work and chaplaincy services  
7 in conjunction with other health services.

8 (ii) Conduct of or participation in programs for the education  
9 and training of health services personnel, including undergraduate,  
10 internship, residency, postgraduate, and continuing education  
11 programs for physicians; schools and other training programs for  
12 nurses, technicians, therapists, pharmacists, and other health  
13 services personnel; and in-service education of employees of health  
14 care facilities.

15 (iii) Research relating to the cause, prevention, and treatment  
16 of illness, injury, and disability and the protection, promotion,  
17 or improvement of public health and welfare.

18 (e) "Nonprofit corporation" means a corporation incorporated  
19 under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to  
20 450.3192.

21 (f) "Nonprofit health care organization" means any of the  
22 following:

23 (i) A municipal health facilities corporation incorporated  
24 under the municipal health facilities corporations act, 1987 PA  
25 230, MCL 331.1101 to 331.1507.

26 (ii) A public body organized and existing under the laws of  
27 this state and authorized to provide health services.

1           (iii) A corporation incorporated under the nonprofit  
2 corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, and  
3 authorized to provide health services.

4           (g) "Person" means an individual or a partnership,  
5 corporation, limited liability company, or other legal entity.

6           (h) "Public health code" means the public health code, 1978 PA  
7 368, MCL 333.1101 to 333.25211.

8           (i) "Transacting parties" means the person or persons who seek  
9 to either transfer or acquire ownership, control, or authority of,  
10 or is involved in the conversion of, a nonprofit health care  
11 organization.

12           Sec. 5. (1) A person shall not engage in the conversion or  
13 acquisition of a nonprofit health care organization without first  
14 having notified the department and applied for and received, if  
15 necessary, a certificate of need from the department and the  
16 approval of the attorney general under this act.

17           (2) A person seeking to convert or acquire a nonprofit health  
18 care organization under this act shall notify the department and  
19 submit an application to the attorney general on forms provided by  
20 the attorney general. The application forms shall include the name  
21 of the transacting parties, the terms of the proposed agreement,  
22 the acquisition price, and other information considered appropriate  
23 or necessary by the attorney general. The person who is the  
24 acquiring entity shall submit a copy of the proposed agreement and  
25 all other related documents along with the application and other  
26 required forms to the attorney general. If there is a material  
27 change in the terms or conditions of the proposed conversion, the

1 transacting parties shall withdraw the previous application and  
2 submit a new application with the attorney general.

3 (3) An application form and all related documents submitted  
4 under subsection (2) are public records for purposes of the freedom  
5 of information act, 1976 PA 442, MCL 15.231 to 15.246.

6 Sec. 7. (1) Within 5 working days after receipt of a completed  
7 application and other related documents under section 5, the  
8 attorney general shall publish notice of the application through  
9 means reasonably calculated to give notice to the public and shall  
10 notify by first-class United States mail each person who has  
11 requested in writing from the department or attorney general  
12 advance notice of the filing of such applications. The attorney  
13 general shall include at least all of the following information in  
14 the notice required under this subsection:

15 (a) The fact that an application has been received.

16 (b) The names of the transacting parties to the proposed  
17 agreement.

18 (c) A description of the contents of the application.

19 (d) The date by which a person may submit written comments  
20 about the application to the attorney general.

21 (2) The attorney general shall within 15 days after the date  
22 an application is received determine if the application is complete  
23 for the purposes of review under this act. The attorney general may  
24 find that an application is incomplete if a question on the  
25 application form has not been answered in whole or in part or has  
26 been answered in a manner that does not fairly answer the question  
27 or if the application does not include attachments of supporting

1 documents necessary to answer the question or other required  
2 documentation. If the attorney general determines that an  
3 application is incomplete, he or she shall notify the applicant  
4 within 15 days after the date the determination was made, stating  
5 the reasons for his or her determination of incompleteness with  
6 reference to the particular questions or documentation determined  
7 to be deficient.

8 (3) Within 90 days after receiving a completed application,  
9 the attorney general shall review the application in accordance  
10 with the standards set forth in this act and approve or disapprove  
11 the conversion pursuant to this act.

12 (4) For a conversion that requires both approval from the  
13 attorney general under this act and a certificate of need from the  
14 department under the public health code, the applicant may submit a  
15 single application for both purposes to the department and the  
16 attorney general. The attorney general shall not approve the  
17 application for conversion unless the department grants a  
18 certificate of need for the same.

19 Sec. 9. (1) If a certificate of need is issued, the attorney  
20 general shall during the course of his or her review of an  
21 application under section 7 hold a public hearing on the  
22 conversion, pursuant to this section.

23 (2) A person may intervene in a hearing held under this  
24 section if he or she can show an interest in the conversion  
25 distinct from that of the general public. The attorney general may  
26 jointly promulgate rules with the department pursuant to the  
27 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to

1 24.328, for intervention under this subsection.

2 (3) The attorney general may subpoena additional information  
3 or witnesses, require and administer oaths, require sworn  
4 statements, take depositions, and use related discovery procedures  
5 for purposes of a public hearing held under this section and at any  
6 time before making a decision on an application.

7 (4) The attorney general shall hold the hearing required under  
8 subsection (1) not later than 30 days after the publication of  
9 notice as required under section 7(1). The attorney general shall  
10 give 10 working days' notice before holding a hearing under this  
11 section. The attorney general shall hold a hearing under this  
12 section in the same manner as required for a public hearing held  
13 for proposed rules under the administrative procedures act of 1969,  
14 1969 PA 306, MCL 24.201 to 24.328.

15 Sec. 11. (1) The attorney general shall review the completed  
16 application in accordance with the standards set forth in section  
17 13. Within 90 days after receipt of a completed application, the  
18 attorney general shall do 1 of the following:

19 (a) Approve the conversion, with or without specific  
20 conditions or modifications.

21 (b) Disapprove the conversion.

22 (2) The attorney general shall not make his or her decision to  
23 approve an application subject to a condition or modification not  
24 directly related to criteria enumerated in section 13, and a  
25 condition or modification must bear a direct and rational  
26 relationship to the application under review.

27 (3) If the attorney general does not act within the 90-day

1 period prescribed in subsection (1), the application is approved.

2 (4) The applicant or an intervenor may seek judicial review of  
3 the decision of the attorney general in a court of competent  
4 jurisdiction.

5 Sec. 13. In making a decision to approve or disapprove an  
6 application under this act, the attorney general shall consider all  
7 of the following:

8 (a) Whether the conversion or acquisition is permitted under  
9 the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to  
10 450.3192, the municipal health facilities corporations act, 1987 PA  
11 230, MCL 333.1101 to 331.1507, and other laws of this state  
12 governing nonprofit entities, trusts, or charities.

13 (b) Whether due care was exercised by the nonprofit health  
14 care organization in deciding to sell or otherwise transfer assets,  
15 selecting the acquiring entity, and negotiating the conversion.

16 (c) The procedures used by the nonprofit health care  
17 organization in making its decision to convert, including, but not  
18 limited to, whether appropriate expert assistance was used.

19 (d) Whether conflict of interest was avoided, including, but  
20 not limited to, conflicts of interest related to board members of,  
21 key executives of, legal counsel for, and experts retained by the  
22 nonprofit health care organization or the acquiring entity.

23 (e) Whether the nonprofit health care organization will  
24 receive fair market value for its assets. The attorney general may  
25 employ, at the nonprofit health care organization's expense, 1 or  
26 more necessary expert assistants in making the determination of  
27 fair market value if the application has incompletely addressed the



1 issues enumerated in this subdivision and subdivision (b) or (c).

2 (f) If the conversion is financed in part by the nonprofit  
3 health care organization, whether funds determined by the attorney  
4 general to be charitable funds are placed at risk.

5 (g) Whether a management contract, if any, under the  
6 conversion is for fair market value.

7 (h) Whether the nonprofit health care organization will use  
8 the conversion proceeds for appropriate charitable purposes  
9 consistent with the organization's original purpose, as determined  
10 by the attorney general, or to promote health in the affected  
11 community and whether the proceeds will be controlled as charitable  
12 funds, as determined by the attorney general, independently of the  
13 acquiring entity.

14 (i) If a nonprofit corporation is established to hold the  
15 proceeds of the conversion, whether it will be based in the  
16 community and be a representative of the affected community, and  
17 the structure and governance of the nonprofit corporation.

18 (j) Whether the conversion would create or have the likelihood  
19 of creating an adverse effect on the quality, availability, and  
20 affordability of health services in the community and whether  
21 sufficient procedures and safeguards are included to assure the  
22 affected community continued access to affordable health care.

23 (k) Whether the acquiring entity has made a commitment to  
24 provide care to the disadvantaged, the uninsured, and the  
25 underinsured and to provide benefits to the affected community to  
26 promote improved health care.

27 (l) Whether the conversion will result in a direct or indirect

1 inurement to any private person or entity, including stock options,  
2 agreements not to compete, and other private benefits.

3 (m) Whether the conversion will result in any immediate or  
4 future remuneration to an official director or trustee of the  
5 nonprofit health care organization as a result of the conversion.  
6 Compensation paid for continued employment with the acquiring  
7 entity is not remuneration.

8 (n) Any other issues the attorney general finds necessary to  
9 determine whether the proposed conversion is in the best interest  
10 of the public.

11 Sec. 15. (1) The attorney general shall require periodic  
12 reports to be submitted to the department and the attorney general  
13 from the acquiring entity to ensure compliance with commitments  
14 made as described in section 13. If either the department or the  
15 attorney general determines a report made under this subsection to  
16 be deficient or incomplete, the department or attorney general may  
17 subpoena information and documents and may conduct on-site  
18 compliance audits at the acquiring entity's expense.

19 (2) If the department or attorney general receives information  
20 indicating that the acquiring entity is not fulfilling its  
21 commitment to the affected community under section 13, the  
22 department shall hold a hearing after 10 days' notice to the  
23 affected parties. If after the hearing the department determines  
24 that the information described in this subsection is true, the  
25 department may institute proceedings to require the acquiring  
26 entity to implement a corrective action plan which includes  
27 oversight by the department.

1           Sec. 17. If a person converts or acquires a nonprofit health  
2 care organization without first having received, if necessary, a  
3 certificate of need from the department and the approval of the  
4 attorney general under this act, or if either of the transacting  
5 parties is not fulfilling its commitment to the affected community  
6 under section 13 or is not following procedures of safeguards  
7 described in section 13, the department shall not renew the  
8 nonprofit health care organization's license to operate under  
9 article 17 of the public health code, MCL 333.20101 to 333.22260.

10           Sec. 19. This act applies only to the conversion or  
11 acquisition of a nonprofit health care organization that takes  
12 place after the effective date of this act.