

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1490

S.P. 496

In Senate, March 31, 2003

**An Act To Update and Clarify the Law Regarding the Conversion of
a Nonprofit Hospital and Medical Service Organization to a
Domestic Stock Insurer**

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator DOUGLASS of Androscoggin.
Cosponsored by Representative O'NEIL of Saco.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §194, sub-§1, as enacted by PL 2001, c. 550, Pt. A, §1, is amended to read:

1. **Definition.** As used in this section and sections 194-A to 194-H and section 194-K, "public charity" means an entity formed primarily for charitable purposes, including but not limited to:

A. A corporation formed under Title 13 or Title 13-B primarily for charitable purposes; and

B. A charitable trust.

Sec. 2. 5 MRSA §194-A, sub-§1, ¶I, as enacted by PL 1997, c. 344, §1, is amended to read:

I. "Materially changes its form" or "material change in form" means any transaction that the superintendent or Attorney General determines has transferred control of the organization to a noncharitable-organization person other than a public charity as defined in section 194, substantially changed the organization's legal or regulatory status or substantially changed the organization's purposes, including, but not limited to, conversion, dissolution, merger, division, consolidation, amalgamation, disposition of substantially all of an organization's business, line of business or assets, lease, exchange, restructuring or bulk reinsurance transfer.

Sec. 3. 5 MRSA §194-A, sub-§2, as enacted by PL 1997, c. 344, §1 and affected by §10, is amended to read:

2. **Charitable status of organization.** Any nonprofit hospital and medical service organization is a charitable and benevolent institution and a public charity and its assets are held for the purpose of fulfilling the charitable purposes of the organization. The charitable purposes may include, but are not limited to, the following: providing access to medical care through affordable health insurance and affordable managed care products for persons of all incomes; identifying and addressing the State's unmet health care needs, particularly with regard to medically uninsured and underserved populations; making services and care available through participating providers; and improving the quality of care for medically uninsured and underserved populations. ~~The following ownership interests apply in any proceeding in court or before the superintendent in which the ownership of the organization is at issue or is relevant.~~

2 A. If the organization materially changes its form ~~on or~~
before ~~December 31, 2000~~ and the ownership of an
4 organization is at issue or is relevant in any proceeding in
court or before the superintendent, then 100% of the fair
6 market value of the organization as of the date of the
material change in form is must be owned by the charitable
8 trust upon the approval or approval with modifications of
the charitable trust plan or modified charitable trust plan
by the court pursuant to subsection 5 or 6 and must be
10 dedicated to the fulfillment of the charitable trust.

12 ~~B. If the organization materially changes its form after~~
~~December 31, 2000 and on or before December 31, 2005, then~~
14 ~~95% of the fair market value of the organization as of the~~
date ~~of the material change in form is owned by the~~
16 ~~charitable trust upon the approval or approval with~~
modifications ~~of the charitable trust plan or modified~~
18 ~~charitable trust plan by the court pursuant to subsection 5~~
or ~~6 and must be dedicated to the fulfillment of the~~
20 ~~charitable trust, and the remaining 5% is owned by~~
subscribers ~~in aggregate. For purposes of this paragraph,~~
22 ~~subscribers include only those persons who were subscribers~~
on ~~any date in the 3-year period immediately prior to the~~
24 ~~material change in form, if in each case the person was a~~
subscriber ~~for period of no less than 3 consecutive months.~~

26 ~~C. If the organization materially changes its form after~~
28 ~~December 31, 2005, then 90% of the fair market value of the~~
organization ~~as of the date of the material change in form~~
30 ~~is owned by the charitable trust upon the approval or~~
approval ~~with modifications of the charitable trust plan or~~
32 ~~modified charitable trust plan by the court pursuant to~~
subsection ~~5 or 6 and must be dedicated to the fulfillment~~
34 ~~of the charitable trust, and the remaining 10% is owned by~~
subscribers ~~in aggregate. For purposes of this paragraph,~~
36 ~~subscribers include only those persons who were subscribers~~
on ~~any date in the 3-year period immediately prior to the~~
38 ~~material change in form, if in each case the person was a~~
subscriber ~~for period of no less than 3 consecutive months.~~

40 **Sec. 4. 5 MRSA §194-A, sub-§3,** as enacted by PL 1997, c. 344,
42 §1, is repealed.

44 **Sec. 5. 5 MRSA §194-A, sub-§5, ¶B,** as enacted by PL 1997, c.
344, §1, is amended to read:

46 B. An organization may not convert to a domestic stock
48 insurer under Title 24, section 2301, subsection 9-D until
the Superior Court has approved or approved with
50 modifications the organization's charitable trust plan. The

2 court may not approve or approve with modifications the
charitable trust plan unless it finds that the charitable
trust plan meets the following requirements.

4
6 (1) The plan must describe the charitable trust or
trusts that will receive the ownership interest in the
organization following its conversion to a domestic
stock insurer. For purposes of this section, a
charitable trust:

10 (a) Must be a new or existing trust or ~~nonprofit~~
12 public benefit corporation formed under the laws
of this State, but may not include the
14 organization or any person controlled by the
organization;

16 (b) Must be a charitable entity that qualifies
18 for federal income tax exemption under the United
States Internal Revenue Code of 1986, as amended,
20 Section 501 (c)(3) or (c)(4);

22 (c) May not be controlled by the converted
domestic stock insurer;

24 (d) May not have more than one of its directors
26 serve as a director of the domestic stock insurer;

28 (e) May not have as a director any person who
has been a director or officer of the
30 organization, the domestic stock insurer or any
affiliate of either during the 3-year period
32 preceding the date of appointment as a director of
the charitable trust; and

34 (f) Must have a board of directors representing
36 the people of the State including, but not limited
to, persons representing the interests of the
38 medically uninsured and underserved populations.

40 (2) The charitable mission of the charitable trust
must include, but is not limited to, serving the
42 State's unmet health care needs for the type of care
historically covered by the organization, particularly
44 with regard to medically uninsured and underserved
populations and providing access to care and improving
46 quality of care for those populations.

48 (3) The charitable trust plan must provide for the
fair and equitable use by the charitable trust of its

ownership interest in the organization to fulfill the charitable mission of the charitable trust.

(4) The charitable trust plan must require the charitable trust to report annually to the Attorney General as to its charitable activities and grant making relating to the use of its ownership interest in the organization and to make that annual report available to the public at both the Department of the Attorney General and the office of the charitable trust.

(5) The charitable trust plan must require the charitable trust, at all times when the charitable trust owns stock in any converted stock insurer and for 5 calendar years after any such ownership, to provide audited financial statements on a calendar-year basis and other reports, as may be required, to the superintendent and the Attorney General at the time and in the manner as either the Attorney General or the superintendent prescribes.

~~(6) The charitable trust plan must state the ownership interests of the charitable trust approved by the Superior Court in the proceeding set forth in subsection 3.~~

(7) The charitable trust must have in place procedures and policies to prohibit conflicts of interest, including those associated with grant-making activities that may benefit the converted stock insurer, its affiliates, any person who owns or controls any ownership interest in either the converted stock insurer or its affiliates and any directors or officers of the converted stock insurer or its affiliates.

Sec. 6. 5 MRSA §194-A, sub-§5, ¶D, as enacted by PL 1997, c. 344, §1, is amended to read:

D. In approving, disapproving or approving with modification the charitable trust plan, the Superior Court may not review or decide the fair market value of the organization, including the methodologies for determining, allocating and transferring the fair market value of the organization, ~~the methodology for allocating and transferring to the owners the ownership interest identified in the statement of ownership interests and charitable purposes approved by the Superior Court or the fair market value of the organization.~~ This paragraph does not in any way limit the appeal rights of any person under the Maine Rules of Civil Procedure, Rule 80(c) or under the Maine

Administrative Procedure Act from the superintendent's final agency action on these matters pursuant to Title 24, section 2301, subsection 9-D.

Sec. 7. 5 MRSA §194-A, sub-§6, as enacted by PL 1997, c. 344, §1, is amended to read:

6. Modified charitable trust plan required for a material change in form. An organization shall notify the Attorney General and the superintendent of the organization's intent to engage in any transaction described in subsection 1, paragraph I at least 60 days prior to engaging in that transaction. Upon the superintendent's or the Attorney General's determination that a transaction described in subsection 1, paragraph I is a material change in form, notice must be given to the organization and the Attorney General or superintendent, as applicable. Within 90 days after the superintendent or the Attorney General issues a notice of the determination that a transaction described in subsection 1, paragraph I is a material change in form, other than through conversion to a domestic stock insurer pursuant to Title 24, section 2301, subsection 9-D, the Attorney General shall file an action in Superior Court under the Attorney General's charitable authority requesting the court to order the organization to submit to the superintendent, the court and the Attorney General a modified charitable trust plan containing the provisions set forth in subsection 5, paragraph I as the court determines are reasonable under the circumstances, together with any additional provisions as the court determines are reasonably required to coordinate the modified charitable trust plan with any proceeding instituted or to be instituted by the superintendent in connection with the material change in form. The Superior Court, after hearing, shall approve, approve with modifications or disapprove the modified charitable trust plan. The superintendent has the right to intervene in the Superior Court proceeding. In the event that either the superintendent or the court determines that a valuation of the organization is necessary, the superintendent shall conduct the valuation consistent with Title 24, section 2301, subsection 9-D. The superintendent may hold proceedings as the superintendent determines necessary to review an organization's proposal to materially change its form. If the modified charitable trust plan includes the creation of a charitable trust or ~~nonprofit~~ public benefit corporation, the charitable trust or ~~nonprofit~~ public benefit corporation may not include the organization or any person controlled by the organization.

Sec. 8. 5 MRSA §194-A, sub-§7, ¶¶B to D, as enacted by PL 1997, c. 344, §1, is amended to read:

2 B. Each health insurance affiliate shall expressly have
corporate purposes that are consistent with or are in
4 furtherance of the charitable and benevolent purposes of its
~~nonprofit-and-charitable~~ public charity owners.

6 (1) Subject to subparagraph (2), the health insurance
affiliate may further its purposes as described in this
8 paragraph by:

10 (a) The provision of direct services that are
consistent with or further the charitable and
12 benevolent purposes of its ~~nonprofit---and~~
~~charitable~~ public charity owners; or

14 (b) The payment of distributions or dividends to
16 any ~~nonprofit-and-charitable~~ public charity owner.

18 (2) The payment by the health insurance affiliate of
distributions or dividends to any owner does not
20 fulfill a health insurance affiliate's purposes as
described in this paragraph if the payment of such
22 distributions or dividends unreasonably interferes with
the health insurance affiliate's ability to fulfill its
24 purposes as described in this paragraph through the
provision of direct services as described in
26 subparagraph (1), division (a). Payment of dividends
and distributions may be made to a for-profit owner
28 consistent with this subparagraph but may not be
considered to fulfill the health insurance affiliate's
30 purposes as described in this paragraph.

32 (3) If the nonprofit hospital and medical service
organization holding an ownership interest in a health
34 insurance affiliate materially changes its form and the
Superior Court has approved or approved with
36 modifications a charitable trust plan or modified
charitable trust plan, the purposes as described in
38 this paragraph of the health insurance affiliate
terminate unless the Superior Court determines
40 otherwise.

42 C. Any ~~charitable--entity~~ public charity that owns or
controls an ownership interest in a health insurance
44 affiliate must be treated as having acquired that ownership
interest in furtherance of the charitable purposes of the
46 ~~charitable-entity~~ public charity.

48 D. The Attorney General may enforce the purposes as
described in paragraph B of a health insurance affiliate
50 under this subsection under the Attorney General's

charitable authority to the same extent as if the health insurance affiliate were a ~~nonprofit--and--charitable organisation~~ public charity.

Sec. 9. 24 MRSA §2301, first ¶, as amended by PL 1993, c. 702, Pt. A, §1, is further amended to read:

Any corporation organized under special Act of the Legislature ~~or~~, under Title 13, chapter 81 or as a public benefit corporation under Title 13-B for the following purposes may be authorized by the superintendent on the terms and conditions provided for in this chapter, except that when such a corporation was previously organized by special Act of the Legislature, this chapter does not apply when inconsistent with that Act as previously amended:

Sec. 10. 24 MRSA §2301, sub-§3-C, as enacted by PL 1997, c. 344, §2, is amended to read:

3-C. Nonprofit purposes. A nonprofit hospital and medical service organization that is authorized to provide nonprofit hospital service plans under subsection 1 ~~and~~, nonprofit medical service plans pursuant to subsection 2 or nonprofit health care plans pursuant to subsection 3 is a charitable and benevolent institution, in accordance with Title 5, section 194-A, and a public charity and its assets are held for the purpose of fulfilling the charitable purposes of the organization, which purposes may include, but are not limited to, the following: providing access to medical care through affordable health insurance and affordable managed care products for persons of all incomes; identifying and addressing the State's unmet health care needs, particularly with respect to medically uninsured and underserved populations; making services and care available through participating providers; and improving the quality of care for medically uninsured and underserved populations.

Sec. 11. 24 MRSA §2301, sub-§7, as amended by PL 1993, c. 702, Pt. A, §1 is further amended to read:

7. Administrative services. A corporation has the right to utilize its organization and facilities, either directly or through another legal entity owned by it and similar corporations located in other states, to perform services for the United States or State or the units or agencies of either; or any ~~charitable or nonprofit organisation~~ public charity involved in health care;

Sec. 12. 24 MRSA §2301, sub-§9-B, as amended by PL 1997, c. 344, §3, is repealed.

2 **Sec. 13. 24 MRSA §2301, sub-§9-D, ¶B,** as amended by PL 2001,
c. 550, Pt. B, §2, is further amended by repealing subparagraph
(9).

4 **Sec. 14. 24 MRSA §2301, sub-§9-D, ¶E,** as enacted by PL 1997,
6 c. 344, §4, is amended to read:

8 E. The superintendent may not issue final approval of a
conversion plan unless the superintendent finds that:

10 (1) The terms and conditions of the conversion plan
12 are fair and equitable and, in determining what is fair
and equitable, consideration may be given to, but is
14 not limited to, the factors set forth in paragraph L;

16 (2) The conversion plan is subject to approval by the
vote of not less than 2/3 of the organization's board
18 of directors;

20 (3) The conversion plan provides for the issuance of
capital stock or assets of the converted stock insurer
22 or a combination of stock and assets, without
consideration, to the charitable trust equal to the
24 ~~charitable interest set forth in the organization's~~
~~statement of ownership interests and charitable~~
26 ~~purposes, exclusive of any shares issued pursuant to~~
~~paragraph G~~ 100% of the fair market value of the
28 organization;

30 ~~(4) The conversion plan provides for the issuance of~~
~~capital stock or assets of the converted stock insurer~~
32 ~~or a combination of stock and assets, without~~
~~consideration, to persons who were subscribers of the~~
34 ~~organization on the date the conversion plan was filed~~
~~with the superintendent or on any date in the 3-year~~
36 ~~period immediately prior to the date the conversion~~
~~plan was filed, if in each case the person was a~~
38 ~~subscriber for a period of no less than 3 consecutive~~
~~months, under a fair and reasonable formula consistent~~
40 ~~with and in the aggregate equal to the aggregate of the~~
~~subscribers' interests set forth in the statement of~~
42 ~~ownership interests and charitable purposes, exclusive~~
~~of any shares issued pursuant to paragraph G;~~

44 (5) Immediately after, and giving effect to the terms
46 of, the conversion, the converted stock insurer would
be in safe and sound financial condition and would have
48 paid in capital stock and surplus in amounts not less
than the minimum paid in capital stock and surplus set
50 forth under Title 24-A, section 410 required of a

domestic stock insurer authorized to transact like kinds of insurance;

~~(6)---The--organization's--management--has--not,--through reduction--in--volume--of--new--business--written--or cancellation--or--through--any--other--means,--sought--to reduce,--limit,--or--affect--the--number--or--identity--of--the organization's---subscribers---to---be---entitled---to participate--in--the--conversion--plan--or--to--secure--for--the individuals--comprising--management--any--unfair--advantage through--the--conversion--plan;~~

(7) The conversion plan provides that during the first 3 years after the conversion, to avoid dilution of the value of the shares issued in the conversion, the converted stock insurer and its affiliates may not issue shares greater in seniority, including voting rights or dividends, than the shares issued under the conversion plan. The superintendent may waive the provisions contained in this subparagraph if the superintendent, in the superintendent's sole discretion, determines that the charitable trust has control, as defined in Title 24-A, section 222, of the converted stock insurer;

(8) The conversion plan is consistent with the charitable trust plan and does not adversely affect the distribution of the organization's value to the charitable trust; and

(9) The conversion plan complies with all applicable law.

Sec. 15. 24 MRSA §2301, sub-§9-D, ¶G, as enacted by PL 1997, c. 344, §4, is repealed.

Sec. 16. 24 MRSA §2301, sub-§9-D, ¶I, as enacted by PL 1997, c. 344, §4, is amended by amending subparagraph (1) to read:

(1) The appraisal must enable determinations of value for purposes of: the amount of cash or other assets that the charitable trust will be entitled to receive, without consideration, under the provisions of the conversion plan required by paragraph E, subparagraph (3).

~~(a)---The--amount--of--cash--or--other--assets--that subscribers---or---the---charitable---trust---will---be entitled--to--receive,--without--consideration,--under~~

2 ~~the provisions of the conversion plan required by~~
3 ~~paragraph E, subparagraphs (3) and (4), and~~

4 ~~(b) -- The price of any shares to be issued pursuant~~
5 ~~to the optional provisions of a conversion plan~~
6 ~~permitted by paragraph G.~~

8 **Sec. 17. 24 MRSA §2308-A, sub-§1, ¶C**, as enacted by PL 1997,
9 c. 344, §5, is amended to read:

10 C. "Nonprofit hospital and medical service organization" or
11 "organization" means a corporation or other entity
12 authorized by the superintendent and organized pursuant to
13 this chapter for the purpose of providing nonprofit hospital
14 service plans within the meaning of section 2301, subsection
15 1 and, nonprofit medical service plans within the meaning of
16 section 2301, subsection 2, ~~-- It does not include~~ and any
17 organization that provides only nonprofit health care plans
18 within the meaning of section 2301, subsection 3 ~~or a health~~
19 ~~insurance affiliate.~~

22

23 SUMMARY

24

25 This bill is intended to implement the requirements of
26 Public Law 2001, chapter 550, which directed the Superintendent
27 of Insurance to submit legislation to the 121st Legislature not
28 later than January 1, 2003, to clarify that 100% of the net
29 proceeds of a charitable organization covered by the nonprofit
30 health and medical services organization conversion law are
31 deemed public assets and to make any other changes the
32 superintendent considers appropriate. The proposed amendments
33 include technical corrections to ensure consistency with Public
34 Law 2001, chapter 550 as well as provide clarification that 100%
 of the net proceeds of any such conversion are public assets.