

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
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THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
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SEPTEMBER 13, 2003

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
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regulations protect the confidentiality of the shared data. The commissioner shall adopt rules to carry out the purposes of this section. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

2. **Renewal of licenses.** If a holder of a license issued under this Part fails to provide information required under this section, the commissioner may refuse to renew that holder's license until the holder complies with the requirements of this section.

Sec. 2. 12 MRSA §6804, sub-§4, as enacted by PL 1999, c. 491, §5 and affected by §9, is repealed.

Sec. 3. 12 MRSA §6808, sub-§3, as enacted by PL 2001, c. 186, §1, is repealed.

Sec. 4. 12 MRSA §6851, sub-§2-D, as enacted by PL 1999, c. 491, §6 and affected by §9, is amended to read:

2-D. Wholesale seafood license with shrimp permit. At the request of the applicant, the commissioner shall issue a wholesale seafood license with a shrimp permit. A person holding a wholesale seafood license with a shrimp permit may engage in all of the activities in subsection 2 and may buy, sell, ship or transport shrimp.

~~The commissioner shall adopt rules regarding data that the holder of a wholesale seafood license with a shrimp permit must submit to the department. The commissioner may deny an application for the renewal of a wholesale seafood license with a shrimp permit if the license holder fails to report the information required pursuant to this subsection.~~

Sec. 5. 12 MRSA §6864, sub-§6, as enacted by PL 1999, c. 7, §15, is repealed.

See title page for effective date.

CHAPTER 171

S.P. 496 - L.D. 1490

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

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.~~

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

ant to subsection 5 or 6 and must be dedicated to the fulfillment of the charitable trust.

~~B. If the organization materially changes its form after December 31, 2000 and on or before December 31, 2005, then 95% of the fair market value of the organization as of the date of the material change in form is owned by the charitable 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 dedicated to the fulfillment of the charitable trust; and the remaining 5% is owned by subscribers in aggregate. For purposes of this paragraph, subscribers include only those persons who were subscribers on any date in the 3-year period immediately prior to the material change in form, if in each case the person was a subscriber for period of no less than 3 consecutive months.~~

~~C. If the organization materially changes its form after December 31, 2005, then 90% of the fair market value of the organization as of the date of the material change in form is owned by the charitable 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 dedicated to the fulfillment of the charitable trust; and the remaining 10% is owned by subscribers in aggregate. For purposes of this paragraph, subscribers include only those persons who were subscribers on any date in the 3-year period immediately prior to the material change in form, if in each case the person was a subscriber for period of no less than 3 consecutive months.~~

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

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

B. An organization may not convert to a domestic stock insurer under Title 24, section 2301, subsection 9-D until the Superior Court has approved or approved with modifications the organization's charitable trust plan. The court may not approve or approve with modifications the charitable trust plan unless it finds that the charitable trust plan meets the following requirements.

(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:

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

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

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

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

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

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

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

(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 determina-

tion 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, are amended to read:

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

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

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

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

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

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

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

D. The Attorney General may enforce the purposes as described in paragraph B of a health insurance affiliate 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 organization~~ 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 organization~~ public charity involved in health care;

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

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).

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

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

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

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

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

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

(5) Immediately after, and giving effect to the terms of, the conversion, the converted stock insurer would be in safe and sound financial condition and would have paid-in capital stock and surplus in amounts not less than the minimum paid-in capital stock and surplus set 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 the provisions of the conversion plan required by paragraph E, subparagraphs (3) and (4); and~~

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

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

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

See title page for effective date.
