

SENATE BILL NO. 409

INTRODUCED BY C. LARSEN

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CONVERSION OF NONPROFIT HEALTH ENTITIES; REQUIRING MEMBER AND BENEFICIARY APPROVAL OF A CONVERSION TRANSACTION INVOLVING A NONPROFIT HEALTH ENTITY; PROVIDING FOR A FEE TO COVER THE COST OF POLLING OF MEMBERS AND BENEFICIARIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 50-4-701, 50-4-702, 50-4-703, 50-4-707, 50-4-713, AND 50-4-714, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-4-701, MCA, is amended to read:

"50-4-701. Definitions. As used in this part, the following definitions apply:

(1) "Commissioner" means the Montana state auditor and ex officio commissioner of insurance provided for in 2-15-1903.

(2) "Control or governance" means the possession, indirect or direct, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise unless the power is solely the result of an official position with a corporate office held by the person.

(3) (a) "Conversion" or "conversion transaction" means the sale, transfer, lease, exchange, transfer by exercise of an option, optioning, conveyance, merger, affiliation, mutualization, joint venture, or other disposition by a nonprofit health entity or another person or entity resulting in the transfer of control or governance to a person or entity other than the nonprofit health entity of the lesser of:

(i) more than 10% in fair market value of the assets or operations of a nonprofit health entity; or

(ii) assets of a nonprofit health entity amounting to a fair market value of \$5 million or more.

(b) A disposition or transfer constitutes a conversion transaction regardless of whether it occurs directly or indirectly and whether it occurs in a single transaction or a series of related transactions. In determining the value of a tangible asset under this definition, the value of the asset must be calculated net of any mortgage, lien, or other encumbrance on the asset that exists of record.

1 (c) The term does not include:

2 (i) a transaction in the ordinary course of the nonprofit health entity's business that does not result in a
3 material change in the nonprofit health entity's ownership, management structure, or nonprofit corporate mission;

4 (ii) a transaction or series of transactions in the ordinary course of a nonprofit health entity's business if
5 the effect of the transaction or series of transactions is not to convert the nonprofit health entity from a nonprofit
6 to a for-profit entity, to transfer the nonprofit health entity's business or operations to a for-profit entity, or to
7 transfer the control or benefit of public assets and the proceeds of public assets to a mutual benefit or for-profit
8 entity;

9 (iii) awards, grants, or payments to or on behalf of intended members or beneficiaries, consistent with
10 the lawful purposes of a nonprofit health entity;

11 (iv) a change in the membership of the board of directors or officers of the nonprofit health entity or a
12 wholly owned subsidiary of the nonprofit health entity if the change in membership does not result in a change
13 in the nonprofit corporate status of the nonprofit health entity, does not result from a transfer of control,
14 governance, or ownership of the nonprofit health entity, and does not result from transfer of a power of
15 appointment of directors or officers of the nonprofit health entity or a wholly owned subsidiary of the nonprofit
16 health entity;

17 (v) settlement, satisfaction, or payment of a claim or suit against or debt of the nonprofit health entity or
18 a wholly owned subsidiary of the nonprofit health entity incurred in the ordinary course of business;

19 (vi) execution of a promissory note, guaranty, or other evidence of indebtedness for the amount of a loan,
20 the proceeds of which are paid solely to the nonprofit health entity or a wholly owned subsidiary of the nonprofit
21 health entity;

22 (vii) any payment, transfer, or other transaction required by law or by order of any authorized
23 administrative officer or agency, including but not limited to payment of taxes, fees, fines, penalties, or other
24 assessments to a government or a nonprofit health entity or a transaction ordered by the commissioner or the
25 attorney general;

26 (viii) purchases, sales, or transfers in the ordinary course of business for fair market value of cash or cash
27 equivalents owned by the nonprofit health entity or any wholly owned subsidiary in exchange for goods, products,
28 services, or an interest in property, including but not limited to stocks, shares, bonds, notes, evidences of
29 indebtedness, negotiable instruments, or an ownership interest in an entity, to be held by the nonprofit health
30 entity or its wholly owned subsidiary;

1 (ix) granting of an encumbrance in the ordinary course of business, such as a security interest or
2 mortgage deed with respect to an asset owned by the nonprofit health entity or a wholly owned subsidiary of the
3 nonprofit health entity to secure indebtedness for borrowed money, the net proceeds of which are paid solely to
4 the nonprofit health entity or its wholly owned subsidiary, and a foreclosure or other exercise of remedies
5 permitted with respect to an encumbrance;

6 (x) sale, investment, or transfer in the ordinary course of business for fair market value of an interest in
7 property owned by the nonprofit health entity or a wholly owned subsidiary, the net proceeds of which are paid
8 solely to the nonprofit health entity or its wholly owned subsidiary;

9 (xi) any transfer of assets between a nonprofit health entity that is a nonprofit public benefit corporation
10 and a nonprofit mutual benefit corporation in which all of the members are nonprofit public benefit corporations,
11 provided that the management of all assets transferred by a nonprofit public benefit corporation in a transaction
12 described in this subsection (3)(c)(xi) continue to be managed in a manner consistent with the public benefit
13 purpose of the transferring nonprofit public benefit corporation; or

14 (xii) any other transaction or proposed transaction for fair market value if:

15 (A) the nonprofit health entity or its wholly owned subsidiary retains or will retain substantially the same
16 degree of control, governance, or ownership of the proceeds of the transaction that the nonprofit health entity or
17 its wholly owned subsidiary held in the assets or operations prior to the transaction or proposed transaction;

18 (B) the nonprofit health entity maintains its operations as a nonprofit health entity and public assets or
19 the proceeds of public assets are maintained as public assets; and

20 (C) none of the assets or operations of the nonprofit health entity or its wholly owned subsidiary inure
21 or will inure directly or indirectly to the benefit of any officer, director, trustee, or employee of the nonprofit health
22 entity or its wholly owned subsidiary.

23 (4) "Fair market value" means the fair market value as of the date of the transaction or proposed
24 transaction as determined by an independent appraisal of the assets or operations performed and communicated
25 by a qualified appraiser according to applicable professional appraisal standards.

26 (5) "Health maintenance organization" has the meaning provided in 33-31-102.

27 (6) "Health service corporation" has the meaning provided in 33-30-101.

28 (7) "Member" means a person who is enrolled in an individual health plan insured by a nonprofit health
29 entity or a person that is enrolled in a group health plan that is insured or administered by a nonprofit health entity
30 as an employee, retiree, or COBRA beneficiary.

1 ~~(7)~~(8) (a) "Nonprofit health entity" means:

2 (i) a nonprofit health maintenance organization; or

3 (ii) a nonprofit health service corporation.

4 (b) The term includes any entities affiliated with a nonprofit health entity through ownership, governance,
5 or membership, such as a holding company or subsidiary.

6 ~~(6)~~(9) "Ordinary course of business" means with respect to a transaction or disposition that the
7 transaction comports with the usual and customary practices of the kind of business in which the nonprofit health
8 entity is engaged.

9 ~~(9)~~(10) "Public assets" include:

10 (a) assets held for the benefit of the public or the community;

11 (b) assets in which the public has an ownership interest;

12 (c) assets owned by a governmental entity; and

13 (d) assets owned by a nonprofit corporation to the extent that the corporation holds assets in a charitable
14 trust.

15 ~~(10)~~(11) "Transferee" means the person in a conversion transaction that receives the ownership or control
16 of the nonprofit health entity that is the subject of the conversion transaction or of the nonprofit health entity's
17 assets.

18 ~~(11)~~(12) "Transferor" means the nonprofit health entity that is the subject of the conversion transaction
19 or the corporation that owns the nonprofit health entity that is the subject of the conversion transaction."
20

21 **Section 2.** Section 50-4-702, MCA, is amended to read:

22 **"50-4-702. Conversion transaction -- approval.** A person may not engage in a conversion transaction
23 involving a nonprofit health entity unless;

24 (1) the commissioner and the attorney general issue orders approving the conversion transaction; and

25 (2) a majority of the members and beneficiaries of the nonprofit health entity polled by the commissioner
26 approve the conversion transaction."
27

28 **Section 3.** Section 50-4-703, MCA, is amended to read:

29 **"50-4-703. Rulemaking authority.** The commissioner and the attorney general may adopt rules to carry
30 out this part, including rules that:

- 1 (1) specify the form and content of the written notice, required documents, and supplemental information;
- 2 (2) develop procedures under which proprietary business information and trade secrets are protected
- 3 from public disclosure for the purposes of 50-4-708 to the extent allowed by law;
- 4 (3) develop polling procedures for membership and beneficiary conversion transaction approval as
- 5 provided in 50-4-713; and
- 6 ~~(3)(4)~~ establish hearing and appeal procedures."

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8 **Section 4.** Section 50-4-707, MCA, is amended to read:

9 **"50-4-707. Application process -- content -- polling fee.** (1) A person that seeks to engage in a

10 conversion transaction for a nonprofit health entity and the nonprofit health entity shall submit an application to

11 the commissioner and a copy of the application to the attorney general.

12 (2) The application submitted under subsection (1) is in addition to any other filing required by law.

13 (3) An application must include:

14 (a) the name of the proposed transferor;

15 (b) the name of the proposed transferee;

16 (c) the names of any other parties to the conversion transaction agreement;

17 (d) the terms of the proposed conversion transaction, including but not limited to a description and

18 valuation of all consideration exchanges as a part of or as a result of the conversion and the extent to which the

19 assets proposed to be converted are public assets;

20 (e) a copy of the conversion transaction agreement;

21 (f) a financial and community impact analysis report from an independent expert or consultant that

22 addresses the criteria in 50-4-715 through 50-4-717;

23 (g) an independent valuation of the fair market value of the nonprofit health entity for a valuation date

24 within 1 year prior to receipt by the nonprofit health entity or publication of a bona fide bid, offer, or letter of intent

25 to acquire the nonprofit health entity; and

26 (h) an antitrust analysis prepared by an appropriate expert.

27 (3) A person that seeks to engage in a conversion transaction for a nonprofit health entity and the

28 nonprofit health entity that submits an application to the commissioner shall pay a fee to the commissioner that

29 covers the cost of polling the members and beneficiaries pursuant to 50-4-713."

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1 **Section 5.** Section 50-4-713, MCA, is amended to read:

2 **"50-4-713. Deadline for approval or nonapproval.** (1) ~~Within~~ Subject to subsection (5), within 60 days
3 after the record, including the public hearing process, has been closed, the commissioner and the attorney
4 general shall each issue a separate order to:

5 (a) approve the conversion transaction, with or without modifications; or

6 (b) disapprove the conversion transaction.

7 (2) If the commissioner and the attorney general do not both determine that the conversion transaction
8 is approved, the conversion transaction is disapproved.

9 (3) Subject to subsection (4), the commissioner or the attorney general may, for cause, extend the time
10 for making a determination for a 60-day period.

11 (4) The commissioner and the attorney general are limited to a maximum of two 60-day extensions for
12 making a determination on the same application.

13 (5) (a) If both the commissioner and the attorney general approve the conversion transaction, the
14 commissioner shall, within 10 days of the joint approval, poll the members and beneficiaries of the nonprofit
15 health entity.

16 (b) If a majority of the members and beneficiaries polled approve the conversion transaction, then the
17 determination of the commissioner and the attorney general is affirmed.

18 (c) If a majority of the members and beneficiaries polled disapprove the conversion transaction, then the
19 conversion transaction is considered disapproved, regardless of whether both the commissioner and the attorney
20 general approve the transaction."

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22 **Section 6.** Section 50-4-714, MCA, is amended to read:

23 **"50-4-714. Effect of determination.** (1) Determinations made by the commissioner and the attorney
24 general under 50-4-713 to disapprove the conversion transaction become effective on the date on which both
25 the commissioner and the attorney general have issued orders under 50-4-713.

26 (2) (a) Subject to subsection (2)(b), determinations made by the commissioner and the attorney general
27 under 50-4-713 to approve the conversion transaction become effective on the date that the commissioner
28 certifies that a majority of the members and beneficiaries of the nonprofit health entity polled approve the
29 conversion transaction.

30 (b) If the commissioner and the attorney general under 50-4-713 make a determination to approve the

1 conversion transaction but a majority of the members and beneficiaries polled disapprove the conversion
2 transaction, then the disapproval is considered effective on the date that the commissioner certifies that a majority
3 of the members and beneficiaries of the nonprofit health entity polled disapprove the conversion transaction."

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5 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

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7 NEW SECTION. Section 8. Retroactive applicability. [This act] applies retroactively, within the
8 meaning of 1-2-109, to any conversion transaction approval process for which an application for a conversion
9 transaction has been received by the commissioner.

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