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April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH PROCEDURES FOR CONVERSIONS BY HOSPITAL, MEDICAL, AND DENTAL SERVICE CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-65-130(3) reads as rewritten:

"(3) The charter of any corporation subject to the provisions of this Article and Article 66 of this Chapter may be amended to convert that corporation, so amending its charter, into either a mutual nonstock or stock accident and health insurance company or life insurance company subject to the provisions of Articles 1 through 64 of this Chapter provided the rights of the subscribers or certificate holders in the reserves and capital of such corporation are adequately protected. ~~under rules and regulations adopted by the Commissioner of Insurance. A corporation converting to a mutual nonstock or stock accident and health insurance company or life insurance company or otherwise~~

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1 restructuring shall follow the provisions of G.S. 58-65-131 through G.S.
2 58-65-134."

3 Section 2. Article 65 of Chapter 58 of the General Statutes is amended by
4 adding the following new sections to read:

5 **"§ 58-65-131. Conversion; procedure.**

6 (a) It is the intent of the General Assembly by the enactment of this section and
7 G.S. 58-65-132 through G.S. 58-65-134 to create a procedure for a corporation subject to
8 this Article to convert to a mutual nonstock or stock accident and health insurance
9 company or life insurance company subject to Articles 1 through 64 of this Chapter. The
10 General Assembly recognizes the substantial and recent changes in market and health
11 care conditions that are affecting these corporations and further recognizes the need for
12 equal regulatory treatment and competitive equality for health care insurers. The General
13 Assembly further finds that a procedure for conversion is in the best interest of
14 policyholders because it will provide greater financial stability for the corporations'
15 policyholders and a greater opportunity for the corporations to remain financially
16 independent.

17 (b) As used in this section and G.S. 58-65-132 through G.S. 58-65-134:

18 (1) 'Corporation' means a corporation subject to this Article that attempts to
19 convert from a hospital, medical, or dental service corporation to a
20 mutual nonstock or stock accident and health insurance company or life
21 insurance company and that files a plan of conversion with the
22 Commissioner under subsection (e) of this section.

23 (2) 'New corporation' means a corporation originally subject to this Article
24 that has had its plan of conversion approved by the Commissioner under
25 subsection (e) and that has actually converted to a mutual nonstock or
26 stock accident and health insurance company or life insurance company.

27 (c) A corporation may amend its charter pursuant to this Article to convert the
28 corporation to a mutual nonstock or stock health and accident insurance company or life
29 insurance company subject to Articles 1 through 64 of this Chapter. The amended
30 charter shall be filed with the Commissioner for approval pursuant to G.S. 58-65-130(3),
31 together with a plan for conversion setting forth provisions for fulfilling the conditions
32 necessary to effect the conversion and a designated date upon which the conversion shall
33 become effective if these conditions are fulfilled. Upon the designated date set forth in
34 the plan, the corporation shall become subject to the applicable laws as provided in
35 subsection (h) of this section and shall no longer be subject to this Article and Article 66
36 of this Chapter.

37 (d) A corporation subject to this Article shall file a plan for conversion with the
38 Commissioner at least 120 days before the proposed date of conversion. The corporation
39 shall reimburse the Department for the actual cost of reviewing, analyzing, and
40 processing the application. The Commissioner may contract with experts or consultants
41 to assist in reviewing the application. Contract costs for these personal professional
42 services shall not exceed an amount which is reasonable and necessary for the review of
43 the application. A personal professional services contract entered into under this

1 subsection is exempt from Article 3C of Chapter 143 of the General Statutes. The
2 corporation filing an application for conversion shall promptly pay, upon request, for all
3 costs of these personal professional services.

4 (e) A corporation that has amended its charter to convert the corporation to a
5 mutual nonstock or stock accident and health insurance company or life insurance
6 company shall fulfill the conditions necessary to effect the conversion if the plan of
7 conversion sets forth with specificity the following terms and conditions of the proposed
8 conversion:

9 (1) The purpose of the conversion.

10 (2) The articles of incorporation of the new corporation, including a
11 description of the classes of policyholders or shareholders.

12 (3) The bylaws of the new corporation.

13 (4) A description of any changes in the new corporation's mode of
14 operations after conversion.

15 (5) A statement describing the manner in which the plan provides for the
16 protection of all existing contractual rights of the corporation's
17 subscribers or certificate holders for medical, hospital, or dental service
18 or claims for reimbursement for those services, and the manner in which
19 the plan protects the public interest.

20 (6) A statement that the new corporation assumes all assets and liabilities of
21 the previous corporation.

22 (7) Documentation showing that the corporation, its board of directors,
23 trustees or other governing authority and its subscribers or certificate
24 holders have approved the plan in accordance with the corporation's
25 articles of incorporation and bylaws.

26 (8) The business plan of the new corporation, including, but not limited to,
27 a comparative premium rate analysis of the new corporation's major
28 plans and product offerings, that, among other things, compares actual
29 premium rates for the three-year period before the filing of the
30 application for conversion and forecasted premium rates for a three-year
31 period following the proposed conversion. This rate analysis shall
32 address the forecasted effect, if any, of the proposed conversion on the
33 cost to subscribers or policyholders of the new corporation and on the
34 new corporation's underwriting profit, investment income, and loss and
35 claim reserves, including the effect, if any, of adverse market or risk
36 selection upon these reserves. Any information provided under this
37 subsection shall receive confidential treatment pursuant to G.S. 58-19-
38 40.

39 (9) The plan provides for definite conditions to be fulfilled by a designated
40 early date upon which the conversion will be deemed effective.

41 (f) The Commissioner of Insurance shall approve the plan of conversion and issue
42 a certificate of authority to the filing corporation to transact insurance in this State
43 pursuant thereto if the Commissioner finds all of the following:

- 1 (1) The plan of conversion meets the requirements of subsection (e) of this
2 section.
- 3 (2) Upon conversion, the new corporation will meet the applicable
4 standards and conditions under this Chapter, including applicable
5 minimum surplus requirements.
- 6 (3) The plan would not be contrary to law nor to the rights of the
7 subscribers or certificate holders in the reserves and capital of the
8 corporation.
- 9 (4) No director, officer, or employee of any hospital, medical and dental
10 service corporation will receive:
- 11 a. Any fee, commission, compensation or other valuable
12 consideration for aiding, promoting, or assisting in the
13 conversion of the hospital, medical and dental service
14 corporation to a domestic mutual insurer, other than
15 compensation paid to any director, officer, or employee of the
16 corporation in the ordinary course of business; or
- 17 b. Any distribution of the assets, surplus, or capital of the
18 corporation as part of a conversion.
- 19 (5) The corporation has complied with all applicable requirements of this
20 Chapter, and disciplinary action is not warranted against the
21 corporation.
- 22 (6) The plan is fair and equitable, and not prejudicial to the subscribers and
23 certificate holders of the corporation and the subscribers and
24 policyholders of the new corporation.
- 25 (7) The plan is in the public interest.
- 26 (g) A plan of conversion that meets the requirements of subsection (e) of this
27 section and is approved by the Commissioner pursuant to subsection (f) is rebuttably
28 presumed to protect adequately the rights of the subscribers or certificate holders in the
29 reserves and capital of the corporation and to be fair and equitable and not prejudicial to
30 the subscribers or certificate holders of the corporation, the subscribers or policyholders
31 of the new corporation, and the public interest, except in any declaratory judgment or
32 other legal action brought by the Attorney General.
- 33 (h) The Commissioner of Insurance and the Attorney General may seek a
34 declaratory judgment or take any other legal action necessary to enforce the charitable
35 trust provisions of G.S. 58-65-134.
- 36 (i) Upon completion of the corporation's conversion as provided for in this section
37 and G.S. 58-65-132 through G.S. 58-65-134, the new corporation shall be subject to and
38 comply with all applicable laws and regulations applicable to domestic insurers.
- 39 (j) The provisions of subdivision (f)(4) of this section shall apply to any
40 subsequent conversion by the new corporation.

41 **"§ 58-65-132. Rules and procedures.**

- 42 (a) Upon receiving an application to convert, the Commissioner shall publish a
43 notice in one or more newspapers of general circulation in the corporation's service area

1 describing the name of the corporation, the nature of the plan filed under G.S. 58-65-
2 131(d), and the date of receipt of the plan. The notice shall indicate that the
3 Commissioner will solicit public comments and hold a public hearing on the application.

4 (b) All applications, reports, plans, or other documents under this section are
5 public records unless otherwise provided in this Chapter. The Commissioner shall
6 provide the public with prompt and reasonable access to public records relating to
7 conversion of the corporation. Access to public records covered by this section shall be
8 made available at least one month before a solicitation for public comments or public
9 hearing scheduled under this section.

10 (c) Before approving a conversion, the Commissioner shall solicit public
11 comments in written form and shall hold at least one public hearing about the
12 corporation's proposal to comply with the requirements for conversion.

13 (d) The Commissioner shall approve a conversion if he finds that the corporation
14 has met all requirements contained in G.S. 58-65-130 through G.S. 58-65-134.

15 **"§ 58-65-133. Restructuring of corporation.**

16 (a) A corporation that intends to restructure must obtain the prior approval of the
17 Commissioner.

18 (b) For purposes of this section, a 'restructure':

19 (1) Is the sale, lease, conveyance, exchange, transfer, or other similar
20 disposition of a substantial amount of the corporation's assets, as
21 determined by the Commissioner, to an entity other than a nonprofit
22 business or entity. Nothing in this section prohibits the Commissioner
23 from consolidating actions taken by the corporation for the purpose of
24 treating the consolidated actions as a restructuring of the corporation.

25 (2) Does not include any sales or purchases undertaken in the normal and
26 ordinary course of the corporation's business. The Commissioner may
27 request information from the corporation to verify that transactions
28 qualify as occurring in the normal and ordinary course of corporate
29 business.

30 (c) The Commissioner shall not approve any restructuring that in the
31 Commissioner's opinion seeks to effect a conversion unless the provisions of G.S. 58-65-
32 130 through G.S. 58-65-132 and G.S. 58-65-134 are met with respect to the restructuring.

33 **"§ 58-65-134. Distribution of assets.**

34 In evaluating the interest of the subscribers, policyholders, and the public pursuant to
35 G.S. 58-65-131(f), and after considering the portion of the corporation's surplus, if any,
36 that belongs to the subscribers or policyholders of the corporation and new corporation,
37 the Commissioner, with the advice of the Attorney General, shall consider what portion
38 of the corporation's surplus is subject to a charitable trust for the benefit of the citizens of
39 North Carolina. The corporation shall provide to the Commissioner, at the
40 Commissioner's request, information necessary to determine the appropriate fair market
41 value of any charitable trust amount."

42 Section 3. This act is effective when it becomes law.