

§194-A. Nonprofit hospital and medical service organizations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Affiliate" means a person who directly or indirectly controls or is controlled by or is under common control with the person specified. [PL 1997, c. 344, §1 (NEW).]
- B. "Charitable authority" means the Attorney General's authority over charities under section 194, under the Attorney General's corresponding common law authority and under the Maine Nonprofit Corporation Act, Title 13-B. [PL 1997, c. 344, §1 (NEW).]
- C. "Charitable trust" means the entity described in subsection 5, paragraph B, subparagraph (1). [PL 1997, c. 344, §1 (NEW).]
- D. "Contract holder" means the employer, labor union, association, trustee, creditor or other entity to which a group contract evidencing coverage is issued. [PL 1997, c. 344, §1 (NEW).]
- E. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, 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 or a corporate office held by the person. [PL 1997, c. 344, §1 (NEW).]
- F. "Conversion" means the process by which a nonprofit hospital and medical service organization, with the approval of the superintendent pursuant to Title 24, section 2301, subsection 9-D, converts to a domestic stock insurer. [PL 1997, c. 344, §1 (NEW).]
- G. "Fair market value" means the value of an organization or an affiliate or of the assets of such an entity determined, consistent with Title 24, section 2301, subsection 9-D, as if the entity had voting stock outstanding and 100% of its stock were freely transferrable and available for purchase without restrictions. In determining fair market value, consideration must be given to value as a going concern, market value, investment or earnings value, net asset value and a control premium, if any. If a charitable trust receives, at the time of conversion, 100% of the shares of the then-outstanding stock of the converted domestic stock insurer, the charitable trust is regarded as having acquired the fair market value of the organization unless the superintendent finds that such outstanding stock does not represent the fair market value of the organization. [PL 1997, c. 344, §1 (NEW).]
- H. "Health insurance affiliate" means any domestic for-profit stock insurer required to be authorized under Title 24-A, section 404 to provide health insurance or any domestic for-profit health maintenance organization required to be licensed under Title 24-A, chapter 56 that is formed, acquired, invested in or otherwise established, whether directly or indirectly, by a nonprofit hospital and medical service organization. [PL 1997, c. 344, §1 (NEW).]
- 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 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. [PL 2003, c. 171, §2 (AMD).]
- J. "Member" means a member of the nonprofit hospital and medical service organization entitled to vote under the articles or bylaws of the organization. [PL 1997, c. 344, §1 (NEW).]
- K. "Nonprofit hospital and medical service organization" or "organization" means a corporation or other entity authorized by the superintendent or organized pursuant to Title 24 for the purpose

of providing nonprofit hospital service plans within the meaning of Title 24, section 2301, subsection 1, nonprofit medical service plans within the meaning of Title 24, section 2301, subsection 2 and any organization that provides only nonprofit health care plans within the meaning of Title 24, section 2301, subsection 3. [PL 2001, c. 550, Pt. B, §1 (AMD).]

L. "Subscriber" means an individual who has subscribed to one or more of the hospital, medical or health care service plans or contracts offered by the organization or health insurance affiliate as defined in Title 24, section 2308-A through an individual or family policy or group policy. [PL 1997, c. 344, §1 (NEW).]

M. "Superintendent" means the Superintendent of Insurance. [PL 1997, c. 344, §1 (NEW).]
[PL 2003, c. 171, §2 (AMD).]

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.

A. If the organization materially changes its form 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 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 pursuant to subsection 5 or 6 and must be dedicated to the fulfillment of the charitable trust. [PL 2003, c. 171, §3 (AMD).]

B. [PL 2003, c. 171, §3 (RP).]

C. [PL 2003, c. 171, §3 (RP).]
[PL 2003, c. 171, §3 (AMD).]

3. Determination of ownership interest and charitable purposes by the Superior Court.

[PL 2003, c. 171, §4 (RP).]

4. Representation of charitable interests. Except as provided in this subsection, the Attorney General is the sole person authorized to represent the charitable interests of beneficiaries of the charitable obligations of a nonprofit hospital and medical service organization and any health insurance affiliate in any proceeding before any court or any administrative agency. The Attorney General may enforce the organization's charitable obligations in an action in Superior Court under the Attorney General's charitable authority. Nothing in this subsection may be construed to limit the superintendent's authority with respect to the interests of subscribers or the public in enforcing the provisions of Title 24 and Title 24-A.

A. The board of directors of a nonprofit hospital and medical service organization has the responsibility to fulfill the organization's charitable obligation, subject only to the Attorney General's authority to represent the charitable interests of beneficiaries of the organization's charitable obligation, any applicable law and the superintendent's authority to enforce Title 24 and Title 24-A. [PL 1997, c. 344, §1 (NEW).]

B. A nonprofit hospital and medical service organization shall reimburse the Attorney General and the superintendent for the costs of any experts or consultants retained by the Attorney General or the superintendent in connection with any matter before any court or any administrative agency

relating to the organization's charitable value and charitable obligations. [PL 1997, c. 344, §1 (NEW).]
[PL 1997, c. 344, §1 (NEW).]

5. Charitable trust plan required prior to conversion. A nonprofit hospital and medical service organization shall submit a charitable trust plan to the Attorney General at the same time that it submits a conversion plan to the superintendent for approval of a conversion to a domestic stock insurer pursuant to Title 24, section 2301, subsection 9-D.

A. Within 60 days of the organization's submission of the charitable trust plan to the Attorney General, the Attorney General shall file an action under the Attorney General's charitable authority in Superior Court seeking approval, approval with modifications, or disapproval of the charitable trust plan or of any amended charitable trust plan submitted to the Attorney General by the organization with the consent of the Attorney General. [PL 1997, c. 344, §1 (NEW).]

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 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.

(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. [PL 2003, c. 171, §5 (AMD).]

C. The superintendent has the right to intervene in the Superior Court proceeding. [PL 1997, c. 344, §1 (NEW).]

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. 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. [PL 2003, c. 171, §6 (AMD).]

[PL 2003, c. 171, §§5, 6 (AMD).]

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 public benefit corporation, the charitable trust or public benefit corporation may not include the organization or any person controlled by the organization.

[PL 2003, c. 171, §7 (AMD).]

7. Affiliates providing health insurance. This subsection governs health insurance affiliates.

A. A nonprofit hospital and medical service organization shall notify the Attorney General at least 60 days prior to directly or indirectly forming, acquiring, investing in or otherwise establishing a health insurance affiliate. [PL 1997, c. 344, §1 (NEW).]

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 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 public charity owners; or

(b) The payment of distributions or dividends to any 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. [PL 2003, c. 171, §8 (AMD).]

C. Any 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 public charity. [PL 2003, c. 171, §8 (AMD).]

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 public charity. [PL 2003, c. 171, §8 (AMD).]

E. A nonprofit hospital and medical service organization shall file with the Attorney General and the superintendent a charitable activities plan at least 60 days prior to the organization's sale of any ownership interest in a health insurance affiliate or the sale or other disposition of substantially all the assets of the health insurance affiliate.

(1) The charitable activities plan must set forth the charitable activities that the nonprofit hospital and medical service organization intends to pursue with the revenues or proceeds received from the sale of any ownership interest in a health insurance affiliate or the sale or other disposition of substantially all the assets of the health insurance affiliate.

(2) If the Attorney General concludes that the charitable activities plan does not fairly and equitably fulfill the nonprofit hospital and medical service organization's charitable purposes, the Attorney General shall bring an action in Superior Court under the Attorney General's charitable authority to challenge the charitable activities plan. The Attorney General shall provide to the superintendent prior written notice of any such action. The superintendent has the right to intervene in such action. If the Superior Court determines that the organization's charitable activities plan does not fairly and equitably fulfill the organization's purposes as described in paragraph B, the court shall issue orders necessary to remedy the inadequacies in the charitable activities plan.

(3) If a nonprofit hospital and medical service organization sells its ownership interest in a health insurance affiliate and the charitable activities plan filed with the Attorney General in connection with the sale has been approved by the Attorney General or the Superior Court, then

the purposes described in paragraph B of a health insurance affiliate terminate unless the Superior Court determines otherwise. [PL 1997, c. 344, §1 (NEW).]

F. Each health insurance affiliate shall file an annual report with the Attorney General at the time and in the manner as the Attorney General shall establish describing the efforts that the affiliate has undertaken to fulfill its purposes as described in paragraph B, including, but not limited to, all direct services as described in paragraph B, subparagraph (1), division (a) and grant making. [PL 1997, c. 344, §1 (NEW).]

G. The sale by an organization of its ownership interest in a health insurance affiliate for fair market value, as determined by the superintendent, does not constitute a diversion of charitable assets. [PL 1997, c. 344, §1 (NEW).]

[PL 2003, c. 171, §8 (AMD).]

8. Annual report. The organization shall file an annual report with the Attorney General and the superintendent at the time and in the manner as the Attorney General establishes describing the efforts that the organization has undertaken to fulfill its charitable and benevolent purposes.

[PL 1997, c. 344, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 344, §1 (NEW). PL 1997, c. 344, §10 (AFF). PL 2001, c. 550, §B1 (AMD). PL 2003, c. 171, §§2-8 (AMD).

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