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SENATE BILL 684

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Linda M Lopez

AN ACT

RELATING TO HEALTH; ENACTING THE NONPROFIT HEALTH PLAN  
CONVERSION ACT; AMENDING AND ENACTING SECTIONS OF THE NMSA  
1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the New Mexico Insurance  
Code is enacted to read:

" NEW MATERIAL SHORT TITLE. -- Sections 1 through 12 of  
this act may be cited as the "Nonprofit Health Plan Conversion  
Act". "

Section 2. A new section of the New Mexico Insurance  
Code is enacted to read:

" NEW MATERIAL FINDINGS AND PURPOSE. --

A. The legislature finds that substantial changes  
in health care and in market conditions are affecting

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1 nonprofit health plans and health care providers and are  
2 providing an impetus for many nonprofit health care entities  
3 to convert to for-profit status or enter into arrangements  
4 whereby control of the nonprofit is entirely or partly  
5 transferred to the for-profit sector.

6 B. The legislature further finds that nonprofit  
7 corporations hold their assets in trust for charitable  
8 purposes and that the organizations benefit from considerable  
9 public subsidies in the form of tax exemptions and receipt of  
10 tax-deductible donations. The public interest in nonprofit  
11 assets must be protected in the course of transactions in  
12 which control of these entities is transferred to the for-  
13 profit sector.

14 C. The purposes of the Nonprofit Health Plan  
15 Conversion Act are to regulate such transactions by setting  
16 out the procedures to be followed when a nonprofit health plan  
17 purposes to convert to for-profit status, to ensure that  
18 charitable assets remain in the public realm and continue to  
19 serve the public interest, rather than inuring to private  
20 benefit, and to ensure that New Mexico charitable assets are  
21 not lost to the people of New Mexico through transactions  
22 involving New Mexico nonprofit health care plans and entities  
23 outside of New Mexico. "

24 Section 3. A new section of the New Mexico Insurance  
25 Code is enacted to read:

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1           "[NEW MATERIAL] DEFINITIONS. -- As used in the Nonprofit  
2 Health Plan Conversion Act:

3           A. "applicant" means a New Mexico nonprofit health  
4 care plan that seeks to convert to a corporation organized for  
5 pecuniary profit;

6           B. "charitable assets" means the net value of the  
7 nonprofit care plan, after payment of legal obligations of the  
8 plan;

9           C. "convert" means within a five-year period to  
10 transfer in one or more transactions the legal or equitable  
11 ownership of or direct or indirect control of an aggregate of  
12 twenty percent or more of the assets, operations or business  
13 of a nonprofit health care plan or a mutual corporation  
14 holding assets in a charitable trust to a person other than a  
15 nonprofit corporation;

16           D. "mutual corporation holding assets in  
17 charitable trust" means a mutual corporation that has  
18 converted from a nonprofit health care plan and that has not  
19 yet discharged its obligations by distributing the charitable  
20 assets to a successor charitable organization;

21           E. "new corporation" means the for-profit entity  
22 resulting from the conversion; and

23           F. "nonprofit health care plan" means a health  
24 care plan created pursuant to the Nonprofit Health Care Plan  
25 Law. "

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1           Section 4. A new section of the New Mexico Insurance  
2 Code is enacted to read:

3           "[NEW MATERIAL] PROCESS FOR CONVERSION. --

4           A. No nonprofit health care plan may convert  
5 without first applying for and receiving the approval of the  
6 superintendent. The application filed with the superintendent  
7 shall include a plan of conversion containing all information  
8 required by this section and any other information the  
9 superintendent deems necessary. No filing is complete until  
10 the superintendent has acknowledged receipt of a completed  
11 application.

12           B. A plan of conversion submitted to the  
13 superintendent by an applicant shall comply with Sections  
14 59A-37-4 and 59A-37-5 NMSA 1978, to the extent relevant to  
15 nonprofit health care plans, and shall include the following  
16 information or documents and any other information or  
17 documents required by the superintendent:

- 18                   (1) the business rationale for the  
19 conversion;
- 20                   (2) the proposed articles of incorporation  
21 and bylaws of the new corporation;
- 22                   (3) a description of the proposed  
23 transaction, including the schedule, terms and any conditions,  
24 other than approval of the application by the superintendent,  
25 to be fulfilled by a proposed date upon which the transaction

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1 would occur;

2 (4) a description of any changes in the  
3 applicant's mode of operations after conversion;

4 (5) a statement describing the manner in  
5 which the plan of conversion:

6 (a) provides for the protection of all  
7 existing rights of the corporation's policyholders,  
8 subscribers and enrollees to medical or hospital services and  
9 payment of claims for reimbursement for those services; and

10 (b) ensure continuity of care for  
11 subscribers and enrollees;

12 (6) a statement that all liabilities and  
13 obligations in existence prior to the conversions continue to  
14 exist and attach to the new corporation;

15 (7) documentation showing that the applicant,  
16 acting by its board of directors, has approved the plan of  
17 conversion;

18 (8) documentation of a comparative premium  
19 rate analysis of the applicant's major plans and product  
20 offerings, comparing actual premium rates for the three-year  
21 period prior to the filing of the plan of conversion and  
22 projected premium rates for the three-year period following  
23 any proposed conversion. Any such rate analysis shall address  
24 the projected impact, if any, of the proposed conversion upon  
25 the cost to subscribers as well as the projected impact, if

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1 any, of the proposed conversion upon the new corporation's  
2 underwriting profit, investment income and loss and claim  
3 reserves, including the effect, if any, of adverse market or  
4 risk selection upon such reserves;

5 (9) the current or proposed articles of  
6 incorporation and bylaws of each charitable organization that  
7 will receive the charitable assets. The application shall  
8 describe how the public, health care consumers and consumer  
9 advocates were involved in developing the articles and bylaws  
10 and the mission, structure and governance of any new  
11 charitable organization created to receive the charitable  
12 assets, or in selecting any existing charitable organization  
13 to receive those assets;

14 (10) any proposed agreements between the  
15 charitable organization receiving the charitable assets and  
16 the applicant or the new corporation, including any agreement  
17 relating to the voting or registration for sale of any capital  
18 stock to be issued by the new corporation to the charitable  
19 organization; and

20 (11) a description of plans or proposals to  
21 liquidate the applicant, sell its assets or consolidate or  
22 merge it with any other person, or to make other material  
23 changes in its business or corporate structure or management.

24 C. In reviewing an application filed pursuant to  
25 this section, the superintendent shall examine and determine

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1 that:

2 (1) the financial condition of any party will  
3 not jeopardize the financial stability of the insurer or  
4 prejudice the interests of policyholders, subscribers or  
5 enrollees;

6 (2) the plan of conversion has been adopted  
7 by a majority vote of the board of directors of the applicant;

8 (3) the governing body of the applicant  
9 exercised due diligence in deciding to dispose of the assets  
10 of the applicant in selecting the acquiring entity and in  
11 negotiating the terms and conditions of the acquisition;

12 (4) the plan of conversion is not prejudicial  
13 to the rights of policyholders, subscribers or enrollees of  
14 the new corporation;

15 (5) the plan of conversion adequately  
16 protects the existing rights of the applicant's policyholders,  
17 subscribers and enrollees to medical or hospital services and  
18 to payment of claims for reimbursement for those services and  
19 ensures continuity of care for subscribers and enrollees;

20 (6) the applicant has complied with all  
21 material requirements of the Insurance Code and disciplinary  
22 action is not pending against it;

23 (7) the competence, experience and integrity  
24 of those persons who would control the operation of the new  
25 corporation has been demonstrated;

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1 (8) the applicant is receiving full fair  
2 market value for its assets, and the value of those assets has  
3 not been manipulated by the actions of any party in a manner  
4 that causes the fair market value of the assets to decrease.  
5 Fair market value shall be determined at the time of  
6 conversion, as if the applicant had voting stock outstanding  
7 and one hundred percent of its stock were freely transferable  
8 and available for purchase without restrictions.  
9 Consideration shall be given to market value, investment or  
10 earning value, net asset value and a control premium, if any;

11 (9) the new corporation, after conversion,  
12 will be able to satisfy the requirements for the issuance of a  
13 certificate of authority to write the line of insurance for  
14 which it is currently authorized or for which it has applied;

15 (10) the conversion will not have an adverse  
16 effect on competition in insurance in the state;

17 (11) if the applicant or any other party to  
18 the conversion has any plans or proposals to liquidate the new  
19 corporation, sell its assets or consolidate or merge it with  
20 any other entity, or to make any other material change in its  
21 business or corporate structure or management, that any such  
22 plans or proposals will have no detrimental impacts on  
23 policyholders, subscribers or enrollees of the new corporation  
24 or on the public interest;

25 (12) there has been no breach of fiduciary



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1 duty and that the conversion will not create a conflict of  
2 interest or result in private inurement to any officer,  
3 director, board member, executive or expert employed or  
4 retained by the parties, or any other person;

5 (13) the new corporation, upon conversion,  
6 will meet the applicable standards and conditions of the  
7 Insurance Code, including applicable minimum capital and  
8 surplus requirements;

9 (14) the plan of conversion is in the public  
10 interest. The superintendent shall find that the plan of  
11 conversion is in the public interest only if it provides a  
12 benefit for the people of New Mexico equal to the value of the  
13 corporation at the time of conversion, in accordance with the  
14 criteria set out in this subsection. In determining whether  
15 the plan of conversion is in the public interest, the  
16 superintendent may also consider other factors, including  
17 those relating to the accessibility and affordability of  
18 health care insurance; and

19 (15) the attorney general has given approval  
20 pursuant to Section 5 of the Nonprofit Health Plan Conversion  
21 Act. "

22 Section 5. A new section of the New Mexico Insurance  
23 Code is enacted to read:

24 "[NEW MATERIAL] ATTORNEY GENERAL'S REVIEW. --

25 A. Before the superintendent approves a plan of

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1 conversion, the attorney general, on behalf of the public and  
2 charitable interests in this state, must approve the  
3 determination of the applicant's fair market value, the  
4 articles of incorporation and bylaws of the charitable  
5 organizations that will receive the charitable assets and any  
6 proposed stock agreements, voting trusts, voting agreements,  
7 stock divestiture agreement or similar agreements relating to  
8 the organization's potential ownership interest in stock of  
9 the new corporation. To approve a conversion, the attorney  
10 general must find that the requirements set out in  
11 Section 8 of the Nonprofit Health Plan Conversion Act have  
12 been met.

13 B. The attorney general shall present his findings  
14 to the superintendent in writing and shall state whether the  
15 application satisfactorily meets the criteria set forth in the  
16 Nonprofit Health Plan Conversion Act.

17 C. Nothing in the Nonprofit Health Plan Conversion  
18 Act limits the power of the attorney general to seek a  
19 declaratory judgment or to take other legal action to protect  
20 or enforce the rights of the public in a nonprofit  
21 organization. "

22 Section 6. A new section of the New Mexico Insurance  
23 Code is enacted to read:

24 "[NEW MATERIAL] PUBLIC NOTICE, RECORDS AND HEARING--  
25 SUPERINTENDENT'S DECISION. --

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A. Within seven business days after an application is filed with the superintendent, the applicant shall publish notice of the proposed conversion in a form approved by the superintendent in one or more newspapers of general circulation in the area where the nonprofit applicant conducts business. The notice shall be published once a week for three consecutive weeks. Within the same time period, the superintendent shall mail notice to all persons who have requested in writing notice of the filing of applications made pursuant to the Nonprofit Health Plan Conversion Act. A material change in the terms or conditions of the proposed conversion is considered a new filing for purposes of this section.

B. The application and all supporting or supplemental materials filed with the superintendent shall be public records and shall be made available for inspection and copying at the office of the insurance division and the office of the applicant. Charges for copies provided by the insurance division or the applicant must be based upon actual costs not to exceed the prevailing community market rates for photocopying, or fifty cents (\$.50) per page, whichever is less.

C. The superintendent shall hold at least one public hearing on the proposed conversion. The number and location of public hearings held shall be based on the size of

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1 the population and geographic area served by the nonprofit  
2 health care plan. At least twenty-one days prior to each  
3 public hearing, the superintendent shall provide written  
4 notice of the time and place of the hearing through  
5 publication in one or more newspapers of general circulation  
6 in the affected communities. The notice shall be published  
7 once per week for three consecutive weeks. In addition, the  
8 superintendent shall mail notice of the hearing to those  
9 persons referred to in Subsection A of this section. The  
10 superintendent has the discretion to hold additional hearings.  
11 The superintendent shall notify the attorney general promptly  
12 of the scheduled hearing dates. At the hearing:

13 (1) a person may file written comments or  
14 exhibits or may appear and make a statement; and

15 (2) the superintendent may subpoena  
16 additional information or witnesses, require and administer  
17 oaths and require sworn statements at any time prior to making  
18 a decision on an application.

19 D. Within ninety days of the receipt of a  
20 completed application the superintendent shall notify the  
21 applicant in writing of the decision to approve, approve with  
22 conditions or disapprove the plan of conversion. The  
23 superintendent may extend this period for an additional ninety  
24 days if necessary. "

25 Section 7. A new section of the New Mexico Insurance

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1 Code is enacted to read:

2 "[NEW MATERIAL] CONSULTATION AND EXPERT ASSISTANCE--  
3 RULEMAKING AUTHORITY. --

4 A. In considering whether to approve a conversion,  
5 both the superintendent and the attorney general may contract  
6 with, consult and receive advice from any state or federal  
7 agency on those terms and conditions they deem appropriate.

8 B. The superintendent and the attorney general may  
9 retain any experts or consultants reasonably necessary to  
10 assist in their review of the proposed conversion. The  
11 superintendent and the attorney general may each require the  
12 applicant, the new corporation and any other parties to the  
13 transaction to enter into an agreement, on terms established  
14 by the superintendent or the attorney general, respectively,  
15 to pay for any costs incurred in retaining the assistance, and  
16 the responsible parties shall, upon request, promptly pay  
17 those costs.

18 C. The superintendent and the attorney general are  
19 entitled to reimbursement for reasonable costs incurred in  
20 providing notice, holding public hearings and providing  
21 records to the public pursuant to the Nonprofit Health Plan  
22 Conversion Act. The superintendent and the attorney general  
23 may each require the applicant, the new corporation and any  
24 other parties to the transaction to enter into an agreement,  
25 on terms established by the superintendent or the attorney

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1 general, to pay for any costs, and the responsible parties  
2 shall, upon request, promptly pay all those costs.

3 D. The superintendent and the attorney general may  
4 adopt rules to implement the provisions of the Nonprofit  
5 Health Plan Conversion Act. "

6 Section 8. A new section of the New Mexico Insurance  
7 Code is enacted to read:

8 "[NEW MATERIAL] PRESERVATION OF CHARITABLE ASSETS. --

9 A. The charitable assets of a converted plan  
10 shall be irrevocably dedicated to charitable health purposes.

11 B. The charitable assets of a converted plan shall  
12 be distributed to one or more existing or new tax-exempt  
13 charitable organizations operating pursuant to Section  
14 501(c)(3) of the Internal Revenue Code of 1986. In either  
15 instance, whether or not the charitable organization is  
16 classified as a private foundation pursuant to Section 509 of  
17 the Internal Revenue Code of 1986, the charitable organization  
18 shall be subject to the restrictions and limitations that  
19 apply to private foundations found in Sections 4941 through  
20 4945 of that code.

21 C. With the approval of the attorney general, all  
22 or a portion of the amount conveyed to the charitable  
23 organization receiving the charitable assets may consist of  
24 stock in the new corporation.

25 D. Any agreements between the charitable

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1 organization receiving the charitable assets and the applicant  
2 or new corporation, including any agreements relating to the  
3 voting or registration for sale of any capital stock to be  
4 issued by the new corporation to the charitable organization,  
5 shall be on terms that are fair to the charitable organization  
6 and provide that organization with sufficient flexibility to  
7 manage its investment.

8 E. A charitable organization receiving charitable  
9 assets as the result of a conversion is subject to the  
10 following requirements:

11 (1) its directors, officers and staff shall  
12 be and remain independent of the new corporation and its  
13 affiliates;

14 (2) the charitable mission and grantmaking  
15 functions of the charitable organization shall be dedicated to  
16 serving the health needs of the people of New Mexico,  
17 particularly with regard to the medically uninsured and  
18 underserved populations, and shall focus on improving health,  
19 including improving access to services, enhancing quality of  
20 care and addressing prevention and health promotion;

21 (3) it shall establish formal mechanisms to  
22 avoid conflicts of interest and to prohibit grants benefiting  
23 the board of directors or management of the applicant or of  
24 the new corporation;

25 (4) it shall provide the attorney general

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1 with an annual report of its grantmaking and other charitable  
2 activities related to its use of the charitable assets  
3 received. The annual report shall be made available to the  
4 public at both the attorney general's office and the office of  
5 the charitable organization;

6 (5) it shall maintain a community advisory  
7 committee to offer broad public input to the charitable  
8 organization concerning its operations and activities;

9 (6) no part of its net earnings shall inure  
10 to the benefit of any private shareholder or individual; and

11 (7) its governing board shall be  
12 representative of the community and its structure and  
13 operations shall provide mechanisms for ongoing public  
14 consultation and participation.

15 F. No director, officer or employee of the  
16 applicant or new corporation may receive:

17 (1) any fee, commission, compensation or  
18 other valuable consideration for aiding, promoting or  
19 assisting in the conversion of the nonprofit health care plan,  
20 other than compensation paid to the director, officer or  
21 employee of the corporation in the ordinary course of  
22 business; or

23 (2) any distribution of the assets, surplus,  
24 capital or capital stock of the new corporation as part of a  
25 conversion. "



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1           Section 9. A new section of the New Mexico Insurance  
2 Code is enacted to read:

3           "[NEW MATERIAL] MUTUALIZATION PROHIBITED-- RECOVERY OF  
4 CHARITABLE ASSETS FROM MUTUAL CORPORATION HOLDING ASSETS IN  
5 CHARITABLE TRUST. --

6           A. A nonprofit health care plan is prohibited from  
7 becoming a mutual corporation.

8           B. A mutual corporation holding assets in a  
9 charitable trust retains a charitable trust obligation to  
10 preserve its assets for charitable purposes. This obligation  
11 shall be paid by the mutual corporation at the time the mutual  
12 corporation converts into a corporation organized for  
13 pecuniary profit or generates sufficient funds to fulfill its  
14 charitable trust obligation. The basis for the valuation of  
15 the trust obligation shall be the fair market value of the  
16 nonprofit health care plan on the date the plan became a  
17 mutual corporation, augmented by any increase in value of the  
18 mutual corporation attributable to the use of the charitable  
19 assets or to the mutual corporation's prior status as a  
20 nonprofit health care plan, consistent with Section 4 of the  
21 Nonprofit Health Plan Conversion Act.

22           C. If a mutual corporation holding assets in  
23 charitable trust enters into an agreement or transaction to  
24 demutualize, it shall submit an asset distribution plan to  
25 fulfill its charitable obligations, consistent with the

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1 requirements of Section 4 of the Nonprofit Health Plan  
2 Conversion Act. The superintendent shall comply with the  
3 hearing procedures set out in Subsection C of Section 6 of  
4 that act. No agreement or transaction to demutualize shall  
5 occur unless the superintendent approves the plan as fair and  
6 equitable to the public and complies with the provisions of  
7 that act. "

8 Section 10. A new section of the New Mexico Insurance  
9 Code is enacted to read:

10 "[NEW MATERIAL] TRANSACTIONS INVOLVING FOREIGN NONPROFIT  
11 ENTITIES. --

12 A. The provisions of this section apply only when  
13 a nonprofit health care plan proposes to convert to a foreign  
14 for-profit entity.

15 B. Charitable assets involved in a conversion  
16 described in Subsection A of this section shall be identified  
17 as of the time the nonprofit health care plan enters into the  
18 conversion. In the event the nonprofit health care plan or  
19 any successor in interest converts to a foreign corporation  
20 organized for pecuniary profit at any future time, the health  
21 care plan or successor shall comply with the provisions of the  
22 Nonprofit Health Plan Conversion Act, and the charitable  
23 assets, augmented by any increase in value attributable to the  
24 use of such assets, shall be distributed to one or more  
25 nonprofit organizations as provided in that act.

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1 C. The superintendent and the attorney general  
2 shall retain jurisdiction over the nonprofit health care plan  
3 or any successor for the purposes of enforcing compliance with  
4 the Nonprofit Health Plan Conversion Act or with any  
5 conditions imposed or commitments undertaken pursuant to  
6 Subsection E of this section.

7 D. A nonprofit health care plan shall not enter  
8 into a conversion described in Subsection A of this section  
9 without first giving notice to and receiving approval from the  
10 superintendent. The notice shall be in the form prescribed by  
11 the superintendent and shall, at a minimum, comply with  
12 Sections 59A-37-4 and 59A-37-5 NMSA 1978 to the extent  
13 relevant to nonprofit health care plans, and shall include the  
14 following information:

- 15 (1) the parties to the proposed transaction,  
16 with a statement of the charitable purposes of each party;
- 17 (2) the information set forth in Paragraphs  
18 (1) through (8) and (11) of Subsection B of Section 4 of the  
19 Nonprofit Health Plan Conversion Act; and
- 20 (3) such other information as the  
21 superintendent may require.

22 E. As a condition of approval of the proposed  
23 conversion, the superintendent shall:

- 24 (1) require each party to the proposed  
25 conversion to stipulate that:

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1 (a) it is a charitable and benevolent  
2 nonprofit institution;

3 (b) it is entrusted with New Mexico  
4 charitable assets and undertakes to protect and preserve those  
5 assets for the benefit of the people of New Mexico;

6 (c) in the event of a future conversion  
7 of the nonprofit health care plan or any successor to a  
8 corporation organized for pecuniary profit or mutual company,  
9 such assets will be disposed of in accordance with the  
10 provisions of the Nonprofit Health Plan Conversion Act;

11 (d) in the event of dissolution, the  
12 New Mexico charitable assets will be protected and assets will  
13 be properly apportioned among states having a claim to any  
14 portion of the assets of the parties to the transaction or of  
15 any successor entity; and

16 (e) the articles of incorporation of  
17 the parties to the transaction and of any successor entity  
18 shall incorporate the stipulations set forth in Subparagraphs  
19 (a) through (d) of this paragraph;

20 (2) require that the nonprofit health care  
21 plan or any successor give notice to the superintendent prior  
22 to dissolution or conversion, or whenever a change is made in  
23 the entity's articles of incorporation or bylaws;

24 (3) require a process for reporting the data  
25 necessary to identify the charitable assets of the New Mexico

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1 nonprofit health care plan at the time of the transaction,  
2 ensure that New Mexico charitable assets can be identified and  
3 their value determined at the time of any future conversion of  
4 the assets and account for revenues received by the parties or  
5 any successor following the transaction, to document  
6 charitable assets accrued on behalf of the residents of the  
7 state of domicile of each party involved in the conversion.  
8 The superintendent may require that a valuation be made to  
9 determine the full fair market value of the assets of the  
10 nonprofit health care plan at the time of the conversion;

11 (4) impose sufficient safeguards to protect  
12 the charitable assets of the nonprofit health care plan,  
13 including appropriate provision for review and oversight by  
14 the superintendent of future actions of the parties or any  
15 successor that could affect New Mexico charitable assets;

16 (5) require that the boards of directions or  
17 trustees of the parties to the conversion be structured so as  
18 to minimize interlocking directors; and

19 (6) require that any agreements relating to  
20 employment of executives or board members of the nonprofit  
21 health care plan with any other party to the transaction or  
22 any successor in interest be subject to review and approval by  
23 the superintendent.

24 F. Prior to issuing his decision, the  
25 superintendent shall seek the advice of the attorney general,

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1 who shall act on behalf of the public and charitable interests  
2 in the state. The attorney general shall review the materials  
3 submitted by the nonprofit health care plan and shall advise  
4 the superintendent in writing as to the advisability of  
5 approving the proposed conversion and as to any conditions  
6 that should be imposed on the conversion. "

7 Section 11. A new section of the New Mexico Insurance  
8 Code is enacted to read:

9 "[NEW MATERIAL] JUDICIAL REVIEW. --A person aggrieved by a  
10 final decision of the superintendent pursuant to the Nonprofit  
11 Health Plan Conversion Act may petition the district court for  
12 Santa Fe county for judicial review within sixty days after  
13 receipt of the final decision and order. An appeal from a  
14 final decision and order of the superintendent pursuant to  
15 this section shall be conducted pursuant to the procedures of  
16 Section 59A-4-20 NMSA 1978. "

17 Section 12. A new section of the New Mexico Insurance  
18 Code is enacted to read:

19 "[NEW MATERIAL] CONVERSION IN VIOLATION OF ACT VOID. --A  
20 conversion entered into in violation of the Nonprofit Health  
21 Plan Conversion Act is void. "

22 Section 13. Section 59A-47-4 NMSA 1978 (being Laws 1984,  
23 Chapter 127, Section 879.2) is amended to read:

24 "59A-47-4. ORGANIZATION-- [PROFIT-OR] FOREIGN  
25 CORPORATIONS PROHIBITED. --

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1           A. A corporation may be organized under the laws  
2 of this state [~~which~~] that provide for the organization of  
3 nonprofit corporations, as a nonprofit corporation organized  
4 for making health care expense payments on a service benefit  
5 basis or an indemnity basis, or both, for subscribers under  
6 contract with such corporation.

7           B. The articles of incorporation of each health  
8 care plan shall have endorsed thereon or annexed thereto the  
9 consent of the superintendent prior to filing. The amendment  
10 of the articles of incorporation of any health care plan shall  
11 have endorsed thereon or annexed thereto the consent of the  
12 superintendent prior to filing.

13           C. The directors of a health care plan shall be  
14 chosen in accordance with the bylaws of the corporation,  
15 subject to the following:

16                   (1) at least twenty-five percent [~~(25%)~~] of  
17 the directors shall be members of the general public; and

18                   (2) the balance of the directors shall be  
19 either representatives of purveyors or members of the general  
20 public.

21           ~~[D. No health care plan shall be converted into a~~  
22 ~~corporation organized for pecuniary profit; and any such plan~~  
23 ~~shall be maintained and operated primarily for the benefit of~~  
24 ~~its subscribers.]~~

25           D. In the event that a health care plan converts

1 into a corporation organized for pecuniary profit, it must  
2 proceed according to the provisions of the Nonprofit Health  
3 Plan Conversion Act.

4 E. No health care plan shall furnish or contract  
5 to furnish health care expense payments in this state unless  
6 organized [~~under~~] pursuant to the laws of this state as above  
7 provided and so authorized to operate [~~under~~] pursuant to the  
8 provisions of [~~this article~~] Chapter 59A, Article 47 NMSA  
9 1978. No foreign health care plan may be authorized to  
10 conduct business in this state. "

11 Section 14. EFFECTIVE DATE. --The effective date of the  
12 provisions of this act is July 1, 1999.

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1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
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5  
6 March 10, 1999  
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8 Mr. President:  
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10 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to  
11 whom has been referred  
12

13 SENATE BILL 684  
14

15 has had it under consideration and reports same with  
16 recommendation that it DO NOT PASS, but that  
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18  
19 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE  
20 SUBSTITUTE FOR SENATE BILL 684  
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22 DO PASS, and thence referred to the JUDICIARY COMMITTEE.  
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25 Respectfully submitted,

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\_\_\_\_\_  
Roman M. Maes, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Aragon, Kidd, Robinson

Absent: None

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1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE  
2 FOR SENATE BILL 684

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11 **44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

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AN ACT

RELATING TO HEALTH; ENACTING THE NONPROFIT HEALTH PLAN  
CONVERSION ACT; ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the New Mexico Insurance  
Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE. -- This act may be cited as  
the "Nonprofit Health Plan Conversion Act". "

Section 2. A new section of the New Mexico Insurance  
Code is enacted to read:

"[NEW MATERIAL] FINDINGS AND PURPOSE. --

A. The legislature finds that substantial changes in  
health care and in market conditions are affecting nonprofit  
health care plans and health care providers and are providing  
an impetus for many nonprofit health care entities to convert

1 to for-profit status or enter into arrangements whereby  
2 control of the nonprofit is entirely or partly transferred to  
3 the for-profit sector.

4 B. The legislature further finds that nonprofit  
5 corporations hold their assets in trust for charitable  
6 purposes. The public interest in nonprofit assets must be  
7 protected in the course of transactions in which control of  
8 these entities is transferred to the for-profit sector.

9 C. The purposes of the Nonprofit Health Plan  
10 Conversion Act are to regulate such transactions by setting  
11 out the procedures to be followed when a nonprofit health care  
12 plan proposes to convert to for-profit status, to ensure that  
13 charitable assets remain in the public realm and continue to  
14 serve the public interest."

15 Section 3. A new section of the New Mexico Insurance  
16 Code is enacted to read:

17 "[NEW MATERIAL] DEFINITIONS.--As used in the Nonprofit  
18 Health Plan Conversion Act:

19 A. "applicant" means a New Mexico nonprofit health  
20 care plan that proposes to enter into a transaction covered by  
21 the Nonprofit Health Plan Conversion Act;

22 B. "charitable assets" means the net assets of the  
23 nonprofit health care plan;

24 C. "convert" means within a five-year period to  
25 transfer in one or more transactions the legal or equitable

1 ownership of or direct or indirect control of a material  
 2 amount of the assets, operations or business of a nonprofit  
 3 health care plan to a person other than a nonprofit  
 4 corporation but does not include sales or other transfers in  
 5 the ordinary course of business for fair value, the proceeds  
 6 of which are paid solely to the nonprofit health care plan and  
 7 remain subject to the provisions of the Nonprofit Health Plan  
 8 Conversion Act;

9 D. "new corporation" means the for-profit entity  
 10 resulting from the conversion; and

11 E. "nonprofit health care plan" means a health care  
 12 plan created pursuant to the Nonprofit Health Care Plan Law. "

13 Section 4. A new section of the New Mexico Insurance  
 14 Code is enacted to read:

15 "[NEW MATERIAL] PROCESS FOR CONVERSION. --

16 A. No nonprofit health care plan may convert without  
 17 first applying for and receiving the approval of the  
 18 superintendent. The application filed with the superintendent  
 19 shall include a plan of conversion containing all information  
 20 required by this section and any other information the  
 21 superintendent deems necessary. No filing is complete until  
 22 the superintendent has acknowledged receipt of a completed  
 23 application.

24 B. A plan of conversion submitted to the  
 25 superintendent by an applicant shall comply with Sections

. 128495. 3

1 59A-37-4 and 59A-37-5 NMSA 1978, to the extent relevant to  
2 nonprofit health care plans, and shall include the following  
3 information or documents and any other information or  
4 documents required by the superintendent:

5 (1) the business rationale for the conversion;

6 (2) the proposed articles of incorporation and  
7 bylaws of the new corporation;

8 (3) a description of the proposed conversion,  
9 including the schedule, terms and any conditions, other than  
10 approval of the application by the superintendent, to be  
11 fulfilled by a proposed date upon which the conversion would  
12 occur;

13 (4) a description of any changes in the  
14 applicant's mode of operations after conversion;

15 (5) a statement describing the manner in which  
16 the plan of conversion:

17 (a) provides for the protection of all  
18 existing rights of the corporation's policyholders,  
19 subscribers and enrollees to medical or hospital services and  
20 payment of claims for reimbursement for those services; and

21 (b) ensures continuity of care for  
22 policyholders, subscribers and enrollees;

23 (6) a statement that all liabilities and  
24 obligations in existence prior to the conversion continue to  
25 exist and attach to the new corporation;

1                   (7) documentation showing that the applicant,  
2 acting by its board of directors, has approved the plan of  
3 conversion;

4                   (8) documentation necessary for the  
5 superintendent to assess the probable impact of the conversion  
6 on premium rates;

7                   (9) the current or proposed articles of  
8 incorporation and bylaws of each charitable organization that  
9 will receive the charitable assets. The application shall  
10 describe how the public, health care consumers and consumer  
11 advocates were involved in developing the articles and bylaws  
12 and the mission, structure and governance of any new  
13 charitable organization created to receive the charitable  
14 assets, or in selecting any existing charitable organization  
15 to receive those assets;

16                   (10) any proposed agreements between the  
17 charitable organization receiving the charitable assets and  
18 the applicant or the new corporation, including any agreement  
19 relating to the voting or registration for sale of any capital  
20 stock to be issued by the new corporation to the charitable  
21 organization; and

22                   (11) a description of plans or proposals to  
23 liquidate the applicant, sell its assets or consolidate or  
24 merge it with any other person, or to make other material  
25 changes in its business or corporate structure or management.

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1           C. In reviewing an application filed pursuant to  
2 this section, the superintendent shall consider the report and  
3 recommendations of the attorney general and shall determine  
4 that:

5                   (1) the financial condition of any party will  
6 not jeopardize the financial stability of the insurer or  
7 prejudice the interests of policyholders, subscribers or  
8 enrollees;

9                   (2) the plan of conversion has been adopted by  
10 a majority vote of the board of directors of the applicant;

11                   (3) the governing body of the applicant  
12 exercised due diligence in deciding to dispose of the assets  
13 of the applicant, in selecting the acquiring entity and in  
14 negotiating the terms and conditions of the acquisition;

15                   (4) the plan of conversion is not prejudicial  
16 to the rights of policyholders, subscribers or enrollees of  
17 the new corporation;

18                   (5) the plan of conversion adequately protects  
19 the existing rights of the applicant's policyholders,  
20 subscribers and enrollees to medical or hospital services and  
21 to payment of claims for reimbursement for those services and  
22 ensures continuity of care for subscribers and enrollees;

23                   (6) the applicant has complied with all  
24 material requirements of the Insurance Code and disciplinary  
25 action is not pending against it;



1                   (7) the competence, experience and integrity of  
2 those persons who would control the operation of the new  
3 corporation has been demonstrated;

4                   (8) the applicant is receiving full fair market  
5 value for its assets, and the value of those assets has not  
6 been manipulated by the actions of any party in a manner that  
7 causes the fair market value of the assets to decrease. Fair  
8 market value shall be determined at the time of conversion, as  
9 if the applicant had voting stock outstanding and one hundred  
10 percent of its stock were freely transferable and available  
11 for purchase without restrictions. Consideration shall be  
12 given to market value, investment or earning value, net asset  
13 value and a control premium, if any;

14                   (9) the new corporation, after conversion, will  
15 be able to satisfy the requirements for the issuance of a  
16 certificate of authority to write the line of insurance for  
17 which it is currently authorized or for which it has applied;

18                   (10) the conversion will not have an adverse  
19 effect on competition in insurance in the state;

20                   (11) if the applicant or any other party to the  
21 conversion has any plans or proposals to liquidate the new  
22 corporation, sell its assets or consolidate or merge it with  
23 any other entity, or to make any other material change in its  
24 business or corporate structure or management, that any such  
25 plans or proposals will have no detrimental impacts on

1 policyholders, subscribers or enrollees of the new corporation  
2 or on the public interest;

3 (12) there has been no breach of fiduciary duty  
4 and that the conversion will not create a conflict of interest  
5 or result in private inurement to any officer, director, board  
6 member, executive or expert employed or retained by the  
7 parties, or any other person;

8 (13) the new corporation, upon conversion, will  
9 meet the applicable standards and conditions of the Insurance  
10 Code, including applicable minimum capital and surplus  
11 requirements;

12 (14) the plan of conversion is in the public  
13 interest. The superintendent shall find that the plan of  
14 conversion is in the public interest only if it provides a  
15 benefit for the people of New Mexico equal to the value of the  
16 corporation at the time of conversion, in accordance with the  
17 criteria set out in this subsection. In determining whether  
18 the plan of conversion is in the public interest, the  
19 superintendent may also consider other factors, including  
20 those relating to the accessibility and affordability of  
21 health care insurance; and

22 (15) the requirements of Section 8 of the  
23 Nonprofit Health Plan Conversion Act are satisfied."

24 Section 5. A new section of the New Mexico Insurance  
25 Code is enacted to read:

1           "[NEW MATERIAL] ATTORNEY GENERAL' S REVIEW. --

2           A. Prior to issuing his decision, the superintendent  
3 shall seek the advice of the attorney general, who shall act  
4 on behalf of the public and charitable interests in the state.  
5 The attorney general shall advise the superintendent in  
6 writing as to:

7                       (1) his findings and recommendations with  
8 regard to the proposed conversion;

9                       (2) his opinion as to whether the proposed  
10 conversion should be approved and any conditions that should  
11 be imposed on the conversion; and

12                      (3) whether the requirements of Section 8 of  
13 the Nonprofit Health Plan Conversion Act are satisfied.

14           B. Nothing in the Nonprofit Health Plan Conversion  
15 Act limits the power of the attorney general to seek a  
16 declaratory judgment or to take other legal action to protect  
17 or enforce the rights of the public in a nonprofit  
18 organization. "

19           Section 6. A new section of the New Mexico Insurance  
20 Code is enacted to read:

21           "[NEW MATERIAL] PUBLIC NOTICE, RECORDS AND HEARING--  
22 SUPERINTENDENT' S DECISION. --

23           A. Within seven business days after an application  
24 is filed with the superintendent, the applicant shall publish  
25 notice of the proposed conversion in a form approved by the

1 superintendent in one or more newspapers of general  
2 circulation in the area where the nonprofit applicant conducts  
3 business. The notice shall be published once a week for three  
4 consecutive weeks. Within the same time period, the  
5 superintendent shall mail notice to all persons who have  
6 requested in writing notice of the filing of applications made  
7 pursuant to the Nonprofit Health Plan Conversion Act. A  
8 material change in the terms or conditions of the proposed  
9 conversion is considered a new filing for purposes of this  
10 section.

11 B. The application and all supporting or  
12 supplemental materials filed with the superintendent shall be  
13 public records subject to the Inspection of Public Records Act  
14 and shall be made available for inspection and copying at the  
15 office of the insurance division and the office of the  
16 applicant. Charges for copies provided by the insurance  
17 division or the applicant must be based upon actual costs not  
18 to exceed the prevailing community market rates for  
19 photocopying, or fifty cents (\$.50) per page, whichever is  
20 less.

21 C. The superintendent shall hold at least one public  
22 hearing on the proposed conversion. In determining the number  
23 and location of the hearings to be held, the superintendent  
24 shall consider the size of the population and geographic area  
25 served by the nonprofit health care plan and the nature of the

1 proposed conversion. At least twenty-one days prior to each  
 2 public hearing, the superintendent shall provide written  
 3 notice of the time and place of the hearing through  
 4 publication in one or more newspapers of general circulation  
 5 in the affected communities. The notice shall be published  
 6 once per week for three consecutive weeks. In addition, the  
 7 superintendent shall mail notice of the hearing to those  
 8 persons referred to in Subsection A of this section. The  
 9 superintendent has the discretion to hold additional hearings.  
 10 The superintendent shall notify the attorney general promptly  
 11 of the scheduled hearing dates.

12 D. A person may file written comments or exhibits or  
 13 may appear at the hearing and make a statement.

14 E. The superintendent may subpoena additional  
 15 information or witnesses, require and administer oaths and  
 16 require sworn statements at any time prior to making a  
 17 decision on an application.

18 F. The superintendent shall notify the applicant in  
 19 writing of the decision to approve, approve with conditions or  
 20 disapprove the proposed conversion. "

21 Section 7. A new section of the New Mexico Insurance  
 22 Code is enacted to read:

23 "[NEW MATERIAL] CONSULTATION AND EXPERT ASSISTANCE--  
 24 RULEMAKING AUTHORITY.--

25 A. In reviewing a proposed conversion, the

1 superintendent may contract with, consult and receive advice  
2 from any state or federal agency on those terms and conditions  
3 they deem appropriate.

4 B. The superintendent may retain any experts or  
5 consultants reasonably necessary to assist his review of the  
6 proposed transaction. The superintendent may require the  
7 applicant, the new corporation and any other parties to the  
8 transaction to enter into an agreement, on terms established  
9 by the superintendent, to pay for any costs incurred in  
10 retaining the assistance, and the responsible parties shall,  
11 upon request, promptly pay those costs.

12 C. The superintendent is entitled to reimbursement  
13 for reasonable costs incurred in providing notice, holding  
14 public hearings and providing records to the public pursuant  
15 to the Nonprofit Health Plan Conversion Act. The  
16 superintendent may require the applicant, the new corporation  
17 and any other parties to the transaction to enter into an  
18 agreement, on terms established by the superintendent, to pay  
19 for any costs, and the responsible parties shall, upon  
20 request, promptly pay all those costs.

21 D. The superintendent may adopt rules to implement  
22 the provisions of the Nonprofit Health Plan Conversion Act.

23 E. The superintendent and the attorney general shall  
24 retain jurisdiction over the nonprofit health care plan or any  
25 successor for the purposes of enforcing compliance with the

1 Nonprofit Health Plan Conversion Act or enforcing compliance  
 2 with any conditions imposed or commitments undertaken pursuant  
 3 to that act."

4 Section 8. A new section of the New Mexico Insurance  
 5 Code is enacted to read:

6 "[NEW MATERIAL] PRESERVATION OF CHARITABLE ASSETS. --

7 A. The charitable assets of a converted plan shall  
 8 be irrevocably dedicated to charitable health purposes.

9 B. The charitable assets of a converted plan shall  
 10 be distributed to one or more existing or new tax-exempt  
 11 charitable organizations operating pursuant to Section  
 12 501(c)(3) of the Internal Revenue Code of 1986. In either  
 13 instance, whether or not the charitable organization is  
 14 classified as a private foundation pursuant to Section 509 of  
 15 the Internal Revenue Code of 1986, the charitable organization  
 16 shall be subject to the restrictions and limitations that  
 17 apply to private foundations found in Sections 4941 through  
 18 4945 of that code.

19 C. With the approval of the attorney general, all or  
 20 a portion of the amount conveyed to the charitable  
 21 organization receiving the charitable assets may consist of  
 22 stock in the new corporation.

23 D. Any agreements between the charitable  
 24 organization receiving the charitable assets and the applicant  
 25 or new corporation, including any agreements relating to the

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1 voting or registration for sale of any capital stock to be  
2 issued by the new corporation to the charitable organization,  
3 shall be on terms that are fair to the charitable organization  
4 and provide that organization with sufficient flexibility to  
5 manage its investment.

6 E. A charitable organization receiving charitable  
7 assets as the result of a conversion is subject to the  
8 following requirements:

9 (1) its directors, officers and staff shall be  
10 and remain independent of the new corporation and its  
11 affiliates;

12 (2) the charitable mission and grantmaking  
13 functions of the charitable organization shall be dedicated to  
14 serving the health needs of the people of New Mexico,  
15 particularly with regard to the medically uninsured and  
16 underserved populations, and shall focus on improving health,  
17 including improving access to services, enhancing quality of  
18 care and addressing prevention and health promotion;

19 (3) it shall establish formal mechanisms to  
20 avoid conflicts of interest and to prohibit grants benefiting  
21 the board of directors or management of the applicant or of  
22 the new corporation;

23 (4) it shall provide the attorney general with  
24 an annual report of its grantmaking and other charitable  
25 activities related to its use of the charitable assets



1 received. The annual report shall be made available to the  
 2 public at both the attorney general's office and the office of  
 3 the charitable organization;

4 (5) it shall maintain a community advisory  
 5 committee to offer broad public input to the charitable  
 6 organization concerning its operations and activities;

7 (6) no part of its net earnings shall inure to  
 8 the benefit of any private shareholder or individual; and

9 (7) its governing board shall be representative  
 10 of the community and its structure and operations shall  
 11 provide mechanisms for ongoing public consultation and  
 12 participation.

13 F. No director, officer or employee of the applicant  
 14 or new corporation may receive:

15 (1) any fee, commission, compensation or other  
 16 valuable consideration for aiding, promoting or assisting in  
 17 the conversion of the nonprofit health care plan, other than  
 18 compensation paid to the director, officer or employee of the  
 19 corporation in the ordinary course of business; or

20 (2) any distribution of the assets, surplus,  
 21 capital or capital stock of the new corporation as part of a  
 22 conversion. "

23 Section 9. A new section of the New Mexico Insurance  
 24 Code is enacted to read:

25 "[NEW MATERIAL] JUDICIAL REVIEW. --A person aggrieved by a

1 final decision of the superintendent pursuant to the Nonprofit  
2 Health Plan Conversion Act may petition the district court for  
3 Santa Fe county for judicial review within sixty days after  
4 receipt of the final decision and order. An appeal from a  
5 final decision and order of the superintendent pursuant to  
6 this section shall be conducted pursuant to the procedures of  
7 Section 59A-4-20 NMSA 1978. "

8 Section 10. A new section of the New Mexico Insurance  
9 Code is enacted to read:

10 "[NEW MATERIAL] CONVERSION IN VIOLATION OF ACT  
11 VOIDABLE. --Whenever it appears to the superintendent that a  
12 nonprofit health care plan has engaged in a conversion subject  
13 to the provisions of the Nonprofit Health Plan Conversion Act  
14 without obtaining the approval of the superintendent, the  
15 superintendent may order the nonprofit health care plan, a  
16 successor entity or any other party to the conversion to cease  
17 and desist immediately any further activity under the  
18 transaction. After notice and hearing, the superintendent may  
19 also order the nonprofit health care plan, successor entity or  
20 any other party to the conversion to void any contracts and  
21 restore the status quo or to take other action as determined  
22 by the superintendent to be in the best interest of  
23 policyholders, creditors or the public. "

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FORTY- FOURTH LEGI SLATURE  
FIRST SESSI ON, 1999

March 10, 1999

Mr. Presi dent:

Your CORPORATIONS & TRANSPORTATION COMMI TTEE, to  
whom has been referred

SENATE BILL 684

has had it under consideration and reports same with  
recomm~~endation~~ that it DO NOT PASS, but that

SENATE CORPORATIONS AND TRANSPORTATI ON COMMI TTEE  
SUBSTITUTE FOR SENATE BILL 684

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SCORC/SB 684

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DO PASS, and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

\_\_\_\_\_  
Roman M. Maes, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Aragon, Kidd, Robinson

Absent: None

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FORTY- FOURTH LEGI SLATURE

FIRST SESSION, 1999

SB 684/a

March 13, 1999

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred  
SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE  
SUBSTITUTE FOR SENATE BILL 684

has had it under consideration and reports same with  
recommendation that it DO PASS, amended as follows:

1. On page 9, line 5, strike the comma and insert in lieu thereof "as to".
2. On page 9, strike lines 6 through 13 in their entirety.
3. On page 9, line 14, strike "(3)".

Respectfully submitted,

SCORC/SB 684

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

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\_\_\_\_\_  
Michael S. Sanchez, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: McSorley, Tsosie

Absent: None

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