



House Insurance Reported Substitute for HB391

A BILL

TO BE ENTITLED

AN ACT

Relating to health care service corporations; to add Section 10A-20-6.17 to the Code of Alabama 1975; to authorize the formation of a nonprofit holding corporation by a health care service corporation by means of a reorganization; to provide for the reorganization process; to require notice of the reorganization to the Department of Insurance; and to specify the status and authority of the health care service corporation and the nonprofit holding corporation.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 10A-20-6.17 is added to the Code of Alabama 1975, to read as follows:

§10A-20-6.17

(a) For the purposes of this section, the following terms have the following meaning:

(1) AFFILIATE. As defined in Section 27-29-1.

(2) CONTROL. As defined in Section 27-29-1.

(3) DEPARTMENT. The Department of Insurance of the State of Alabama.

(4) INSURER. Any person that meets the definition of insurer in either Section 27-1-2 or Section 27-29-1.

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(5) MEMBER. As defined in Section 10A-3A-1.02.

(6) MEMBERSHIP INTERESTS. As defined in Section 10A-3A-1.02.

(7) NONPROFIT HOLDING CORPORATION. A domestic nonprofit corporation formed in connection with a reorganization that operates under Chapter 3A and that, directly or indirectly through another domestic nonprofit corporation that operates under Chapter 3A, holds all the membership interests in a health care service corporation organized under this article.

(8) PERSON. As defined in Section 10A-1-1.03.

(9) REORGANIZATION. A transaction or series of transactions in which a nonprofit holding corporation is created by or on behalf of a health care service corporation to hold, directly or indirectly through another domestic nonprofit corporation operating under Chapter 3A, a membership interest in the health care service corporation.

(10) SUBSIDIARY. As defined in Section 27-29-1.

(11) ULTIMATE CONTROLLING PERSON. A person that is not under the control of any other person.

(b)(1) Notwithstanding any other provision of this article, a health care service corporation, including a subsidiary of a health care service corporation, by means of a reorganization, may have a nonprofit holding corporation as the ultimate controlling person.

(2) A reorganization shall:

a. Be deemed an internal restructuring that does not result in a change of control of a health care service corporation or any subsidiary of a health care service

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corporation, including an insurer;

b. Not be deemed an acquisition or change of control of a health care service corporation or any subsidiary of a health care service corporation, including an insurer;

c. Not be subject to Section 27-29-3 or Section 27-29-3.1.

(3) Notwithstanding any other provision of law, including this title or Chapter 29 of Title 27, as part of a reorganization, a health care service corporation may make an initial transfer of any combination of cash, investments, or equity ownership interests in an affiliate or a subsidiary to the nonprofit holding corporation or its subsidiary by dividend, distribution, or other means, subject to both of the following conditions:

a. The total statutory value of cash, investments, and ownership interests in an affiliate or a subsidiary, net of liabilities, shall not exceed 25 percent of the health care service corporation's admitted assets as of its most current annual statement filed with the department.

b. The transfer shall be subject to any risk-based capital requirements imposed by the department which the health care service corporation is operating under at the time of the reorganization.

(4) A director, officer, or employee of the health care service corporation shall not receive any fee, commission, additional compensation, or other valuable consideration for aiding, promoting, or assisting in a reorganization.

(5) Compliance with this subsection and subsections (c)

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85 and (d) shall be the exclusive means of effecting a
86 reorganization. Notwithstanding any other provision of law,
87 including Chapter 29 of Title 27, no filings, notices,
88 applications, or approvals, other than those filings and
89 notices required in subsection (d), shall be required in
90 connection with a reorganization, including a transfer
91 pursuant to subdivision (b) (3).

92 (c) (1) Notwithstanding any law of this state, or
93 provision to the contrary in the certificate of formation or
94 governing bylaws, a health care service corporation, by action
95 of its board of directors, may authorize a reorganization and
96 undertake the actions provided in this subsection.

97 (2) Take all steps necessary under Chapter 3A to create
98 a nonprofit holding corporation.

99 (3) Adopt amendments to the health care service
100 corporation's certificate of formation and bylaws to provide
101 for, but not be limited to, any of the following:

102 a. A class of members.

103 b. Characteristics, qualifications, limitations,
104 obligations, and rights of class members, including final
105 distributions.

106 c. Conditions for admission of members and issuance of
107 membership interests.

108 (d) Upon completion of the reorganization, a health
109 care service corporation shall submit a notice of completion
110 to the department, to which shall be attached all of the
111 following:

112 (1) A description of the transactions that effect the

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reorganization.

(2) A copy of the amendments to the health care service corporation's certificate of formation and bylaws.

(3) A copy of the nonprofit holding corporation's certificate of incorporation.

(4) A pro forma balance sheet and income statement for the health care service corporation which demonstrates the financial position of the health care service corporation on the effective date of the reorganization.

(5) A pro forma balance sheet and income statement for the nonprofit holding corporation that demonstrates the financial position of the nonprofit holding corporation on the effective date of the reorganization.

(e)(1) As a result of being created pursuant to this section, a nonprofit holding corporation is:

a. Not deemed to be an insurance company, insurer, or a health care service corporation organized under this article;

b. Not otherwise subject to this article;

c. A nonprofit corporation that is subject to Chapter 3A and which has no members; and

d. The ultimate controlling person of the health care service corporation.

(2) No subsidiary or affiliate of a nonprofit holding corporation is subject to this article unless the subsidiary or affiliate is organized under this article as a health care service corporation.

(f) (1) Notwithstanding any other provision of law, in addition to any transfer in connection with a reorganization



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under subdivision (b)(3), a nonprofit holding corporation may at any time directly or indirectly:

a. Organize, acquire, hold, operate, manage, and invest in any person, including any insurer, subsidiary, or affiliate; and

b. Enter into or engage in any operation, business, transfer, sale, purchase, exchange, loan, agreement, transaction, or other activity subject to compliance with any applicable provision of Chapter 3A or Chapter 29 of Title 27 and subdivision (2).

(2)a. For purposes of this subdivision, the following terms have the following meanings:

1. HEALTH CARE PROVIDER. An entity for which the primary purpose is directly providing health care to patients.

2. HOSPITALS. As defined in Section 22-21-20(1).

b. Subject to subsection (j), a nonprofit holding corporation formed in connection with a reorganization shall not acquire ownership of a majority of the voting securities, ownership of controlling membership interests, or the right to appoint any board members of a person engaged in the business of operating one or more hospitals in the State of Alabama or operating a health care provider in the State of Alabama.

c. As used in paragraph b., the term "person" shall not include a health care service corporation or an entity that is a subsidiary of a health care service corporation.

d. The prohibition in paragraph b. shall not apply to:

1. A nonprofit holding corporation's obtaining membership interests in, becoming a member of, nor having the

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right to appoint any board member of, a health care service corporation;

2. The acquisition of control or the right to appoint any board members of a foreign corporation that is indirectly engaged in the provision of health care to patients in the State of Alabama so long as the revenue from the provision of health care to patients in the State of Alabama for the 12-month period immediately preceding the acquisition is less than 15 percent of the foreign corporation's aggregate consolidated revenue for that same 12-month period.

(g) A nonprofit holding corporation, no later than June 1 of each year, shall file with the department a group capital calculation for the preceding calendar year.

(h) The board of directors of a nonprofit holding corporation shall be comprised solely of individuals who are directors of the health care service corporation. No equity or ownership interest in the nonprofit holding corporation or any subsidiary thereof may be granted to any executive officer or any member of the board of directors of the nonprofit holding corporation or the health care service corporation.

(i) The department may exercise the authority provided under Section 27-2-7 and Section 27-2-19 for purposes of enforcing the nonprofit holding corporation's compliance with this section.

(j) (1) A reorganization does not change the legal form of a health care service corporation or the health care service corporation's certificate of authority to do business.

(2) All subscriber contracts and certificates issued by

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the health care service corporation shall remain in full force and effect.

(3) Upon reorganization, a health care service corporation shall continue to be subject to this article, except for all of the following:

a. Neither a reorganization nor any other transaction permitted by this section shall constitute or require a conversion of the health care service corporation pursuant to any law of this state.

b. In addition to a transfer in connection with a reorganization under subdivision (b)(3), the health care service corporation may approve and pay any direct or indirect dividend or distribution to the nonprofit holding corporation if the dividend or distribution satisfies the applicable standards for payment of a dividend or distribution pursuant to Sections 10A-3A-6.40, 27-29-4(e), and 27-29-5.

c. To the extent not otherwise addressed in, and not contrary to, the certificate of formation or bylaws of the health care service corporation as amended, or this section, all aspects of the membership relationship between the health care service corporation and its member nonprofit holding corporation resulting from a reorganization shall be governed by the applicable provisions of Chapter 3A.

d. A health care service corporation that has completed a reorganization is permitted, pursuant to Section 10A-1-8.02, and subject to any required filings and approvals under Chapter 29 of Title 27, to merge with any domestic or foreign nonprofit corporation if the health care service corporation

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is the surviving corporation in the merger and the domestic or foreign nonprofit corporation that merged with the health care service corporation: (i) in the case of a domestic entity, is not in any way involved in the business of providing, managing, or paying for, health care items or services; or (ii) in the case of a foreign entity, does not offer a health insurance plan that is approved by the department or offered to residents of the State of Alabama.

(4) Notwithstanding anything to the contrary in this section, nothing in this section is intended to or shall prevent, limit, or restrict in any way any direct or indirect acquisition, ownership, transaction, business, investment, or other activity that is made, held, or conducted by a health care service corporation or a subsidiary of a health care service corporation which is otherwise permissible for that person under applicable law.

Section 2. This act shall become effective on October 1, 2026.