

Senate Bill 1115 (as enacted)  
Sponsor: Senator Bill Hardiman  
Senate Committee: Health Policy  
House Committee: Health Policy

**PUBLIC ACT 331 of 2010**

Date Completed: 3-30-11

**CONTENT**

**The bill amended the Municipal Health Care Facilities Corporations Act to do the following:**

- **Allow the board of trustees or a subsidiary board to restructure a municipal health facilities corporation or subsidiary located in Mecosta County as a nonprofit corporation.**
- **Require the board to adopt a restructuring plan.**
- **Require the approval of the governing body of the local unit of government for the restructuring.**
- **Refer to a sale or transfer, rather than a reorganization, in provisions regarding a change in ownership or operation of a corporation or subsidiary or health care facilities and services.**

The bill took effect on December 21, 2010.

**Articles of Incorporation**

The Act prescribes procedures for the execution of the articles of incorporation of a municipal health facilities corporation. ("Corporation" means a municipal health facilities corporation. Under the bill, the term includes a corporation that has completed the restructuring process as described in the bill.) The bill refers specifically to the articles of incorporation of a corporation incorporated by a county, or by a city or village, as applicable, in these provisions.

Under the Act, the incorporation is effective at the time provided in the articles of incorporation, and the validity of the incorporation is conclusively presumed unless questioned in court within 60 days after a certified copy of the articles is filed with the Secretary of State. The bill refers to the incorporation of a corporation or a subsidiary corporation in these provisions. The bill also specifies that the provisions pertaining to the articles of incorporation do not apply to articles of incorporation of a restructured corporation or a restructured subsidiary corporation. The bill similarly revised provisions regarding the amendment of a corporation's articles.

**Restructured Corporation or Subsidiary**

The bill added Section 305a to provide for the restructuring of a corporation or subsidiary corporation as a nonprofit corporation. Specifically, subject to applicable licensing requirements and other regulatory requirements, the requirements of the Nonprofit Corporation Act, and the bill's requirements, the board of trustees or the subsidiary board may restructure a corporation or subsidiary corporation as a nonprofit corporation subject to the Nonprofit Act if the following conditions are met:

- The corporation or subsidiary is located in a county with a population of more than 40,000 and less than 44,000 as of the 2000 decennial census (i.e., Mecosta County).

-- The restructuring is completed before July 1, 2012.

A board proposing to restructure a corporation or subsidiary must adopt a restructuring plan that includes the terms and conditions of the proposed restructuring, as well as the proposed articles of incorporation and bylaws that are to govern the restructured corporation or subsidiary. The articles and bylaws must comply with the Nonprofit Act.

If a restructuring plan is approved, the corporation or subsidiary corporation must file the articles with the Director of the Department of Energy, Labor and Economic Growth (DELEG) as provided in the Nonprofit Act.

The effective date of a restructuring will be the effective date of the articles of incorporation under the Nonprofit Act. When a restructuring takes effect, the restructured corporation or restructured subsidiary is to be considered a continuation of the restructuring corporation or subsidiary. The restructured corporation or subsidiary will have all of the liabilities of the restructuring corporation or subsidiary, and the restructuring will not affect any obligations or liabilities of the corporation or subsidiary, or the personal liability of any person, incurred before the restructuring. The title to all real estate and other property and rights owned by the corporation or subsidiary will remain vested in the restructured corporation or subsidiary without reversion or impairment.

The rights, privileges, powers, and interests in property of the corporation or subsidiary corporation, as well as its debts, liabilities, and duties, may not be considered, as a consequence of restructuring, to have been transferred to the restructured corporation or restructured subsidiary for any purpose of the laws of Michigan.

A proceeding against the corporation or subsidiary corporation may be continued as if the restructuring had not occurred, or the restructured corporation or subsidiary may be substituted in the proceeding for the corporation or subsidiary.

The restructured corporation or subsidiary is to be considered the same entity that existed before the restructuring and

considered incorporated on the date that the corporation or subsidiary was originally incorporated.

The restructured corporation or subsidiary will be subject to the Nonprofit Act and, except as otherwise provided, the provisions of the Municipal Health Facilities Corporations Act.

The articles of incorporation of the corporation or subsidiary filed with the clerk of the county, city, or village, as applicable, will be considered terminated and the articles of incorporation filed under the Nonprofit Act will apply to the corporation or subsidiary. The corporation or subsidiary must deliver a copy of the articles of the restructured corporation or subsidiary to the applicable clerk, who must indicate in his or her records that the corporation or subsidiary has restructured and that the articles filed previously are no longer in effect.

The corporation or subsidiary also must deliver a copy of the articles of incorporation of the restructured corporation or subsidiary to the Secretary of State and notify him or her that the articles previously filed by the clerk of the county, city, or village are no longer in effect.

A subsidiary board may not restructure a subsidiary corporation as a nonprofit corporation under Section 305a without the prior approval of the board of trustees of its parent corporation to the restructuring.

A board of trustees or a subsidiary board may not restructure a corporation or subsidiary without the prior majority approval of the county board of commissioners, city council, or village council, as applicable, that owns the corporation or owns the parent corporation of the subsidiary.

A board of trustees or subsidiary board may not restructure if doing so will in any manner impair the corporation's or subsidiary's obligation with respect to any outstanding obligation, bond, note, or contract.

#### Transfer to Nonprofit Corporation

Under Section 306 of the Act, as amended by the bill, subject to applicable licensing

requirements and other regulatory requirements, a board of trustees or a subsidiary board may enter into and carry out agreements for the sale or transfer of the ownership of a corporation or subsidiary, or the sale or transfer of ownership or operation of some or all of its health care facilities and related assets or health services, to a nonprofit health care organization or to a public authority on behalf of a nonprofit health care organization, by any means. Previously, a board could enter into agreements for the reorganization and transfer of ownership or operation of some or all of its health care facilities and related assets or health services, under this provision.

The bill included references to a corporation or subsidiary in provisions describing the factors a board of trustees or subsidiary board must take into account in establishing the terms of a sale or transfer.

Also, under the bill, any sale or transfer of ownership of a corporation or a subsidiary corporation under Section 306 may be made only with the prior approval of the county board of commissioners, city council, or village council. Any sale or transfer of ownership or operation of health care facilities or health services may be made only with the prior approval of the applicable local governing body if either of the following applies:

- The health care facilities or health services to be transferred provided more than 10% of the corporation's or subsidiary corporation's gross revenue in either of its two full fiscal years completed immediately before the date of the transfer.
- A majority of the governing body of the nonprofit health care organization acquiring the facilities or services is composed of people who are also serving as trustees of the corporation or subsidiary making the transfer.

Previously, any transfer by a corporation or subsidiary under Section 306 required the prior approval of the local governing body if either of those conditions applied.

Under the Act, notwithstanding any other provision, no transfer may be made in a way that impairs the obligation of the corporation or the subsidiary corporation with respect to

any outstanding corporation obligation bond, note, or contract. The bill also refers to a sale in this provision.

MCL 333.1103 et al.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The State, through its Medicaid program, achieves GF/GP savings through a program involving publicly owned hospitals, known as "certified public expenditures". These expenditures reflect uncompensated care provided by public hospitals. The State then receives reimbursement from the Federal government that equates to the Medicaid match that the State would have received had the uncompensated care been covered by Medicaid. The program leads to State savings of between \$35.0 million and \$40.0 million GF/GP each year. Conversion of a publicly owned hospital to nonprofit status will reduce the State's GF/GP savings from this program, proportional to the ratio of uncompensated care performed by the given hospital to uncompensated care performed by all public hospitals.

The bill will have no fiscal impact on DELEG.

Conversion of a public hospital owned by a city, county, or other local entity to nonprofit status will lead to local savings if the local government is subsidizing the hospital's operation.

Fiscal Analyst: Steve Angelotti  
Elizabeth Pratt

### **S0910\1115es.**

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.