Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 450 (as enrolled)
Sponsor: Senator Mike Shirkey
Senate Committee: Michigan Competitiveness
House Committee: Health Policy

Date Completed: 10-18-17

RATIONALE

The Municipal Health Facilities Corporations Act authorizes a county, city, or village to incorporate a public hospital or other health facility, whose property and income are exempt from State and local taxation. Public Act 331 of 2010 added Section 305a to the Act to allow a municipal health facilities corporation or subsidiary corporation to be restructured as a nonprofit corporation and become subject to the Nonprofit Corporation Act. When a restructuring takes effect, the restructured corporation is considered to be the same entity as the one that existed before the restructuring, and has all of the liabilities of the restructuring corporation. Section 305a applies only to a municipal health facilities corporation in a county that meets certain population criteria, and Public Act 331 allowed the restructuring of a corporation located in Mecosta County. More recently, Public Act 45 of 2016 amended Section 305a to allow the restructuring of a health facilities corporation in Alpena County. These amendments were designed to enable an entity incorporated under the Municipal Health Facilities Corporations Act to merge or enter into a partnership with an entity incorporated under the Nonprofit Corporation Act. A similar situation has arisen with respect to the Community Health Center of Branch County, which negotiated its sale to a nonprofit health care organization called ProMedica Health Systems. In order to facilitate this transaction, it has been suggested that the Branch County facility be allowed to restructure as a nonprofit corporation.

CONTENT

The bill would amend Section 305a of the Municipal Health Facilities Corporations Act to allow the board of trustees of a municipal health facilities corporation or a subsidiary board to restructure the corporation or subsidiary corporation as a nonprofit corporation subject to the Nonprofit Corporation Act if both of the following conditions were met:

-- The corporation or subsidiary corporation was located in a county with a population of more than 45,000 and less than 60,000 as of the most recent decennial census.
-- The restructuring was completed before June 30, 2018.

The restructuring would have to comply with the requirements of Section 305a (described below) and the Nonprofit Corporation Act, as well as applicable licensing and other regulatory requirements.

MCL 331.1305a

BACKGROUND

The County Health Facilities Corporations Act was enacted in 1987, when approximately 12 county hospitals in the State were operating under either a 1913 or a 1945 statute. Those laws apparently limited the county hospitals' ability to adjust to changes in the health care industry. Upon the enactment of the 1987 Act, the county hospitals were considered to be incorporated under that statute (unless a county passed, and annually renewed, a resolution to prohibit the incorporation).

Amendments enacted in 1988 extended the Act to cities and villages, and renamed it the Municipalities Health Facilities Corporations Act.

As noted above, Section 305a was added in 2010 to allow a corporation or subsidiary corporation to restructure as a nonprofit corporation. In order to do so, the board of trustees or subsidiary board must adopt a plan that includes the terms and conditions of the restructuring, and the proposed articles of incorporation and bylaws that are to govern the restructured corporation. The articles and bylaws must comply with the Nonprofit Corporation Act. The restructuring of either a corporation or a subsidiary corporation must have the prior majority approval of the applicable local legislative body. The restructuring of a subsidiary corporation also requires prior approval of the parent company's board of trustees.

If the restructuring plan is approved, the corporation or subsidiary corporation must file the articles of incorporation with the Department of Licensing and Regulatory Affairs. The restructuring takes effect on the effective date of the articles of incorporation under the Nonprofit Corporation Act.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Community Health Center (CHC) of Branch County opened its doors in 1939, with 36 beds and 70 employees. Today, the CHC has 71 acute medical and 16 adult psychiatric beds and nearly 500 employees. The CHC campus includes the hospital and seven other facilities, such as the Family Medicine Clinic and the Cancer Center, and two CHC facilities are located off campus. Evidently, the CHC began to look for a partner or buyer after it experienced financial losses several years ago, and an acquisition was negotiated with ProMedica, a nonprofit Toledo-based hospital chain, in 2015.[1]

By allowing the CHC to restructure as a nonprofit corporation, the bill would enable this transaction to be accomplished seamlessly. The corporation would be considered to be the same entity as before the restructuring but would be acquired as a nonprofit by a nonprofit. Otherwise, the CHC will have to incorporate as a new entity under the Nonprofit Corporation Act upon the transfer, and will face a number of legal hurdles in order to continue operating as a hospital. These include obtaining a new certificate of need from the State, enrolling with Medicare and Medicaid and insurance companies as a new provider, and obtaining new licenses, certificates, and accreditations to provide care.[2] Restructuring before the acquisition would avoid the need to essentially start over.

Legislative Analyst: Suzanne Lowe

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 roughly $54.0 million GF/GP each year. Conversion of a publicly owned hospital to nonprofit status would 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. Small public hospitals, such as those eligible for restructuring under the bill, represent only a few hundred thousand dollars of these savings.

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[1] Reid, Don, "Sale of CHC to ProMedica delayed", *The Daily Reporter*, 6-9-2017.
[2] n. 1.

Conversion of a public hospital owned by a city, county, or other local entity to nonprofit status would lead to local savings if the local government is subsidizing the hospital's operation or if the new owner paid off costs incurred by the local government.

Fiscal Analyst: Steve Angelotti

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