

## **Flexibility for Entities Providing Medical Services**

Pending legislation will provide flexibility for using professional corporation and professional limited liability companies to own, manage, and operate medical practices.

Public Act 139 of 1997 amended section 4 of the Professional Service Corporation Act to provide that physicians and surgeons licensed under different provisions of the public health code could be shareholders in the same professional corporation. It did not include physician's assistants who engage in the practice of medicine under the supervision of a physician and are not permitted to independently practice medicine. Physician's assistants, however, would like to be able to acquire an ownership interest in the medical practice in which they work.

Senate Bills 26, 27, and 28 amend the Public Health Code, Professional Service Corporation Act, and Michigan Limited Liability Company Act to permit a physician's assistant to become a shareholder in a professional corporation ("PC") or member of a professional limited liability company ("PLLC") with physicians. SB 26 adds a new subsection to MCL 333.17048 to permit physicians to be shareholders in the same PC or members in the same PLLC as a physician's assistant, and all requirements of part 170, 175, and 180 of the Public Health Code must be met. The amendment requires a disclosure on license renewal form for physicians and physician's assistants regarding whether they are a shareholder of a PC or member of a PLLC.

Senate Bills 27 and 28 amend the definition of "professional service" to add physician's assistant. The bills allow a physician to organize a PC or PLLC with one or more physicians or physician's assistants, subject to section 17048 of the Public Health Code but prohibit a PC or PLLC from having only physician's assistants as shareholders or members.

Senate Bills 26-28 were signed by the Governor and became Public

Acts 124-126, respectively, on July 21, 2010.

The Municipal Health Facilities Corporations Act, 1987 PA 230, authorizes certain local governmental units to incorporate municipal health facilities corporations and subsidiary municipal health facilities corporations for establishing, operating, and managing health services. The act applies to municipal hospitals and the transfer of ownership of public hospital and other health care facilities.

Senate Bill 1115 would amend the Municipal Health Facilities Corporations Act to permit a county to restructure a municipal health facilities corporation or subsidiary corporation as a nonprofit corporation. Home rule cities are permitted under MCL 117.4n to become a member or joint owner in an enterprise with a private nonprofit corporation to create a separate private nonprofit corporation to establish, operate, or maintain a medical facility for a public purpose.<sup>1</sup> Senate Bill 1115 would extend similar flexibility to counties.

The bill passed the Senate and was on second reading in the House on May 4, 2010.

## **Land Sales Act; Promotional Sales**

Public Act 49 of 2010 repeals the Land Sales Act, which regulates the disposition of lots in subdivisions located in other states that are offered for sale to Michigan residents. Public Act 48 of 2010 amends section 2511 of the Occupational Code, MCL 339.2511, to eliminate provisions pertaining to promotional sales in Michigan of property located outside of the state. A real estate broker who proposes to engage in sales of a promotional nature of out-of-state property is no longer required to submit a description of the property and the proposed terms of sale to Department of Energy, Labor & Economic Growth.

## **Electronic Seal**

Public Acts 56 and 57 allow a seal required on certain documents to be affixed electronically. Public Act 56 amends MCL 565.232 regarding

sealing of deeds and other written instruments to permit the seal of a court, public officer, or corporation to be affixed electronically to an instrument or writing or to an electronic document. Public Act 57 amends MCL 8.3n to provide that in all cases in which the seal of any court or public office is required to be affixed to any paper the word "seal" includes seal affixed electronically on paper or affixed to an electronic document.

## **Disclosure of Beneficial Owners of Corporations and LLCs**

The U.S. Senate Homeland Security and Governmental Affairs Committee held a second hearing on the Incorporation Transparency and Law Enforcement Assistance Act, S. 569, in November 2009.<sup>2</sup> The bill would require states to obtain a list of the beneficial owners of each corporation or limited liability company formed in the state and to ensure the list is updated annually.<sup>3</sup>

Written testimony of U.S. Department of Treasury, Assistant Secretary for Terrorist Financing, includes recommendations for amendments to S.569.<sup>4</sup> Kevin L. Shepherd, member of the ABA Task Force on Gatekeeper Regulation and the Profession, testified on behalf of the ABA in support of reasonable and necessary efforts to combat money laundering, tax evasion, and terrorist financing activity but opposed the proposed regulatory approach of S.569.<sup>5</sup> National Association of Secretaries of State opposes S.569 and urged postponement of the markup process.<sup>6</sup>

## **Low Profit Limited Liability Companies**

A limited liability company is a for-profit entity and can be formed for any lawful purpose for which a corporation could be formed under the Business Corporation Act. Public Acts 566 and 567 of 2008 amended the Michigan Limited Liability Company Act to permit a limited liability company to be identified as a "low-profit limited liability company." The definition of "low-profit limited liabil-

ity company” in MCL 450.4102(2)(m) imposes restrictions on the purposes of a limited liability company designated as a low-profit limited liability company, and the articles must state the business purpose for which the LLC is being formed. When a low-profit limited liability company is being formed, consideration must be given to the IRS requirements regarding program related investments.

The American Bar Association, Section on Business Law, Committee on Limited Liability Companies, Partnerships and Unincorporated Entities adopted a resolution regarding L3Cs at the committee’s meeting on April 23, 2010.<sup>7</sup> The resolution states “RESOLVED, that at this time the Committee formally opposes the incorporation into existing limited liability company acts of low profit limited liability company (“L3C”) amendments and respectfully urges all state legislatures not to adopt L3C legislation.”<sup>8</sup>

Seven states have adopted L3C legislation. On January 13, 2010, a report on review of L3C legislation conducted by the Maine Secretary of State was presented to the Maine Joint Standing Committee on Judiciary.<sup>9</sup> The report does not recommend the legislature amend the Maine statute to provide for L3Cs. This report and article by Daniel S. Kleinberger, *A Myth Deconstructed: The “Emperor’s New Clothes” on the Low Profit Limited Liability Company*, are included in material for 2010 International Association of Commercial Administrators Conference.<sup>10</sup>

### Tax-Exempt Organizations

The January 21, 2010 IRS press release reminded tax-exempt organizations to make sure to file their annual information on time. The tax-exempt status of a nonprofit organization that has not filed the required form in the last three years will be revoked. Organizations with gross receipts of less than \$25,000 file the 990-N (e-Postcard) (<http://epostcard.form990.org>) but may choose to file a full 990. To file the 990-N, the tax-exempt organization needs the following information:

1. Employer identification number

2. Tax year
3. Legal name and mailing address
4. Any other names the organization uses
5. Name and address of a principal officer
6. Web site address if the organization has one
7. Confirmation that the organization’s annual gross receipts are normally \$25,000 or less
8. If applicable, a statement that the organization has terminated or is terminating (going out of business)

New regulations eliminated the advanced ruling process. The IRS now automatically classifies a new section 501( c)(3) organization as a public charity for its first five years if it can show in its application that it can reasonably be expected to be publicly supported. Information about the change is available at <http://www.irs.gov/charities/charitable/article/0,,id=184578,00.html>.

### Corporation Division Contact Information

The following contact information is helpful for obtaining information or submitting documents to Corporation Division, Bureau of Commercial Services.

1. Questions regarding filing requirements, status of a pending document, or questions on the statutes administer by the Corporation Division can be sent to [CorpsMail@michigan.gov](mailto:CorpsMail@michigan.gov).
2. Request preprinted reports and determine fees due to renew corporate existence or renew corporate certificate of authority by sending the corporation name, six-digit file number assigned by Corporation Division, and how you would like the forms delivered to [corpnew@michigan.gov](mailto:corpnew@michigan.gov) or calling (517)241-6470.
3. Request preprinted annual statements and reports, certificate of restoration, and fees required to restore LLC to good standing by sending the LLC name, six-digit file number assigned by Corporation Division, and how you

would like the forms delivered to [llcrestore@michigan.gov](mailto:llcrestore@michigan.gov) or calling (517)241-6470.

4. Online filing for a domestic corporation, some foreign profit corporations, and domestic and foreign LLC annual statements and reports is available at [www.michigan.gov/fileonline](http://www.michigan.gov/fileonline).
5. MICH-ELF applications for filer accounts may be faxed to (517)241-6445 during regular business hours of 8 a.m. and 5 p.m., Monday thru Friday, excluding holidays. Submit documents by fax to MICH-ELF: (517)241-6437. Submit documents by email to MICH-ELF: [CDfilings@michigan.gov](mailto:CDfilings@michigan.gov).
6. Expedited review of documents for profit corporations, nonprofit corporations, limited liability companies, and limited partnerships is available for an additional fee. Fees for expedited service are set by Public Acts 217-220 of 2005 and are nonrefundable.

### NOTES

1. Home rule cities are also permitted under MCL 117.4n to form a nonprofit corporation for “purposes that are valid public purposes for cities.”
2. <http://levin.senate.gov/newsroom/supporing/2009/PSI.stateincorporation.031109.pdf>.
3. For discussion of S.569 see J.W. Verrett, *Terrorism Finance, Business Associations, and the “Incorporation Transparency Act”*, <http://lawreview.lsu.edu/Volumes/70/Issue3/VERRETT.pdf>.
4. <http://www.ustreas.gov/press/releases/tg353.htm>.
5. [http://www.abanet.org/poladv/letters/additional/2009nov5\\_kevinshpherds\\_t.pdf](http://www.abanet.org/poladv/letters/additional/2009nov5_kevinshpherds_t.pdf).
6. [http://www.iaca.org/downloads/2010Conference/BOS/7c\\_Talking\\_Points\\_NASS\\_Opposition\\_S569\\_Apr10.pdf](http://www.iaca.org/downloads/2010Conference/BOS/7c_Talking_Points_NASS_Opposition_S569_Apr10.pdf).
7. [http://meetings.abanet.org/webupload/commupload/RP519000/relatedresources/ABA\\_LLC\\_Committee-L3C\\_Resolution\\_and\\_explanation-2-17-10.pdf](http://meetings.abanet.org/webupload/commupload/RP519000/relatedresources/ABA_LLC_Committee-L3C_Resolution_and_explanation-2-17-10.pdf).
8. [http://meetings.abanet.org/webupload/commupload/CL580012/relatedresources/ABA\\_LLC\\_Committee-L3C\\_Resolution\\_and\\_explanation-2-17-10.pdf](http://meetings.abanet.org/webupload/commupload/CL580012/relatedresources/ABA_LLC_Committee-L3C_Resolution_and_explanation-2-17-10.pdf).
9. [http://www.iaca.org/downloads/2010Conference/BOS/6a\\_Resolve\\_2009\\_chapter\\_97\\_L3C.pdf](http://www.iaca.org/downloads/2010Conference/BOS/6a_Resolve_2009_chapter_97_L3C.pdf).
10. [http://www.iaca.org/downloads/2010Conference/BOS/6b\\_Kleinberger\\_Myth\\_Deconstructed.pdf](http://www.iaca.org/downloads/2010Conference/BOS/6b_Kleinberger_Myth_Deconstructed.pdf).

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