

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 619

(Senator Carter)

Finance

Health and Government Operations

**University of Maryland Medical System Corporation – Board of Directors,
Ethics, and Audits**

This emergency bill alters the composition of, and the appointment process for, members of the Board of Directors of the University of Maryland Medical System Corporation (UMMSC), including reconstituting the board. A member of the board may not intentionally use the prestige of office or public position for that member's private gain or that of another, and each member must annually submit a specified disclosure of financial interest to the Health Services Cost Review Commission (HSCRC). UMMSC may not use sole source procurement to award a contract to, or provide a preference for the award of a contract to, an active member of the board or a business entity that employs or has an affiliation with an active member. The Governor must remove a member who has benefited from sole source procurement from the board. The board must (1) adopt specified policies with respect to conflicts of interest and contracts with and payments to members of the board and members of boards of directors of affiliated hospitals; (2) meet specified reporting requirements; and (3) ensure that UMMSC *continues* to be a private, nonprofit, nonstock corporation that is independent from any State agency. The Office of Legislative Audits (OLA) must conduct a forensic audit of UMMSC and report its findings by December 15, 2019.

Fiscal Summary

State Effect: OLA can carry out its responsibilities under the bill with existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Appointment of Current Members of the Board – Termination

The appointment of the members of the board who are in office on the effective date of the bill must end in three phases: (1) the appointment of approximately one-third of the members of the board ends on July 1, 2019; (2) the appointment of approximately one-third of the members of the board ends on October 1, 2019; and (3) the appointment of the remaining members of the board ends on January 1, 2020. However, a member of the board whose appointment ends may apply for reappointment. The (re)appointment of such a member who is appointed by the Governor is subject to the advice and consent of the Senate during the legislative session immediately following the date of appointment. A member reappointed under the bill must be considered appointed on the date of the member's *initial appointment* and is subject to provisions of current law related to the terms of members. If a member is not reappointed, a newly appointed member is considered appointed to fill a vacancy and serves the remainder of the vacating member's term, as specified.

Composition and Appointment of Members of the Board

The bill reduces, from 27 to 25, the maximum number of voting members of the board and specifies that members are to be appointed by the Governor *with the advice and consent of the Senate*. A specific 30-person limit on the number of voting members on the board is repealed. Despite the limit of 25 voting members, for each hospital that affiliates with the University of Maryland Medical System (UMMS) on or after June 1, 2019, the Governor may appoint an additional voting member who is a representative from the hospital.

The bill specifies that one voting member must be the Governor's designee, one member must be appointed by the President of the Senate, and one member must be appointed by the Speaker of the House of Delegates. The Governor's designee or a member appointed by the President or the Speaker serves for a term of five years from the date of appointment and may not serve more than two consecutive five-year terms. In addition, the bill repeals a separate requirement that two voting members of the board must be members of the General Assembly (one nominated by the President of the Senate and one nominated by the Speaker of the House of Delegates). A member of the board may not be a State or local elected official.

Conflict of Interest Policy

By May 31, 2019, the board must adopt a conflict of interest policy for members of the board that includes:

- standards for the disclosure of financial interests;
- specified standards for board member participation in contracts with UMMSC;
- standards for recusal from voting;
- a requirement that a board member may not use the board member's position on the board for personal gain when contracting with UMMSC; and
- a requirement that a board member provide an attestation of any business relationship with UMMSC or any affiliate of the corporation.

The board must send a copy of this conflict of interest policy to the Governor, the President of the Senate, and the Speaker of the House of Delegates after the policy is initially adopted, as well as each time a change is made to the policy.

Contracts with and Payments to Board Members and Affiliated Businesses

The award of a contract or the making of a payment to a board member or an associated business of a member is subject to the approval of the full board. Before UMMSC awards a contract or makes a payment to a board member, the compliance officer for UMMSC must (1) review the contract or payment and advise the member as to whether the contract or payment is appropriate and consistent with the policies of UMMSC and (2) make a recommendation to the board as to whether the contract or payment should be approved or disapproved.

The board must develop a policy governing contracts with and payments to a board member or a member of the board of directors of a hospital affiliated with UMMSC by UMMSC or the affiliated hospital. By December 1 of each year, the board must submit a report to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Joint Audit Committee, the Senate Finance Committee, and the House Health and Government Operations Committee on the adopted policy and how the board has ensured compliance with the policy by affiliated hospitals and members of their boards of directors.

Annual Financial Disclosure Statements

Each member of the board must submit an annual disclosure of financial interest, including any potential conflicts of interest, to HSCRC. A newly appointed member must submit a disclosure of financial interest within 60 days after the member's appointment to the board. HSCRC must make any such statement freely available to the public on its website through

an online registration program. However, HSCRC may not provide public access to the portion of a statement that includes an address that the member has identified as the member's home address. If the Governor determines that a member has willfully filed a false statement, the Governor must remove the member from the board. The board and the compliance officer for UMMSC must review each statement for compliance with the board's conflict of interest policy. HSCRC must send a summary of each statement to the Governor, the President of the Senate, and the Speaker of the House of Delegates.

Required Performance Audit and Internal Review

By May 15, 2019, UMMSC must competitively bid for a certified public accounting (CPA) firm to conduct a performance audit, consistent with professional auditing standards, of its administrative and financial offices to evaluate the efficiency and effectiveness of financial management practices, including procurement and contracting. The performance audit *does not* include any subsidiaries or affiliated hospitals of UMMSC. A CPA firm that provides services to UMMSC or an affiliated hospital is not eligible to bid on the contract. On the award of the contract, the CPA firm must consult with the Joint Audit Committee and OLA in the development of the scope and objectives of the performance audit. By December 31, 2019, UMMSC must submit a certified copy of the performance audit to the Governor, the President of the Senate, and the Speaker of the House of Delegates.

By December 31, 2022, UMMSC must submit a certified copy of a second performance audit, conducted during calendar 2022 in accordance with the above-mentioned requirements, to the Governor, the President of the Senate, and the Speaker of the House of Delegates.

The board must also conduct an internal review of board policies and procedures, including policies for enforcing statutory limits on consecutive terms of appointment for members and continued service after the expiration of a member's term. By December 31, 2019, the board must report the findings and any recommendations for improvements to the Governor, the President of the Senate, the Speaker of the House of Delegates, and OLA. OLA must review and comment on the report to the Joint Audit Committee, the Senate Finance Committee, and the House Health and Government Operations Committee.

Required Forensic Audit by the Office of Legislative Audits

OLA must conduct a forensic audit of UMMSC for calendar 2016 through the bill's effective date or earlier as deemed appropriate by OLA. The forensic audit must:

- identify all of the members of the board and each member's associated businesses;
- obtain all disbursement records from UMMSC;

- identify all contracts with or payments to members of the board and a member's associated businesses;
- identify the basis for the procurement and the UMMSC official and department that initiated and approved the payment;
- identify the procurement method used and tests for propriety of the procurement, including whether it was conducted in accordance with a formal UMMSC policy and whether the full board approved the contract or payment;
- evaluate whether all proper steps were taken and, if a payment or contract was sole source, whether the rationale was documented and supportable; and
- evaluate whether the contract or payment made to a member of the board or the member's associated business was monitored effectively to ensure that all deliverables paid for were provided.

By December 15, 2019, OLA must report to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Joint Audit Committee, the Senate Finance Committee, and the House Health and Government Operations Committee on the findings of the forensic audit. The report must include any recommendations by OLA regarding how best to evaluate the procurement and contracting processes and any contracts with and payments to UMMSC-affiliated hospitals and members of the board or members of the boards of directors of the affiliated hospitals.

Current Law:

University of Maryland Medical System Corporation

UMMSC is organized for charitable, scientific, and educational purposes. Statute further establishes that UMMSC is not a State agency, political subdivision, public body, public corporation, or municipal corporation and is not subject to any provisions of law affecting only governmental or public entities. As of the date of transfer from State control (in 1984), UMMSC owns, leases, manages, and operates UMMS, including any components or health services determined by the board.

University of Maryland Medical System Corporation Board of Directors

The government of UMMSC is vested in the board. The board includes at least 22 and up to 27 voting members appointed by the Governor, 3 of whom are members of the University System of Maryland (USM) Board of Regents; 2 of whom are members of the General Assembly; at least 1 of whom is nominated by the Community Advisory Council from the membership of the Community Advisory Council; and at least 1 of whom has expertise in the hospital field. In addition, the board includes 6 *ex officio* nonvoting members. A member of the board must be a resident of the State.

Section 13-304 of the Education Article authorizes the board to amend its articles of incorporation to add up to 3 voting members who represent an entity that affiliates with UMMSC on or after October 1, 2014. Nominations for additional voting members are made by the board and submitted to the USM Board of Regents for comment and to the Governor for consideration. Any member appointed to the board as a representative of an affiliated entity is appointed by the Governor and designated as an affiliate member. The voting membership of the board may not exceed 30 members.

Members of the board serve staggered five-year terms, with terms beginning on the first Monday in June of the year of appointment. A member may be reappointed but may not serve more than two consecutive full terms. Members of the board serve without compensation but are entitled to reimbursement for expenses as provided by the board.

Maryland Public Ethics Law: Financial Disclosure Statements

Under the Maryland Public Ethics Law, most public officials, all State officials, and all candidates for State office must file financial disclosure statements on an annual basis. Generally, this statement must be filed under oath with the State Ethics Commission by April 30 of each year and covers the calendar year that precedes the filing. Most employees and officials must disclose (1) interests in real property, corporations, partnerships, and any specified other business entities that do business with the State; (2) gifts more than \$20 in value or a series of gifts totaling more than \$100 received from a person doing business with the State, or regulated by the State, as specified; (3) various paid and nonpaid offices, directorships, and positions held with any business entity that does business with the State, including those positions held by members of the filer's immediate family; (4) debts, excluding retail credit accounts, owed to an entity doing business with or regulated by the filer's governmental unit; (5) immediate family employed by the State; and (6) places of salaried employment, including secondary employment, and sources of earned income, including the income of immediate family, from rental property, business interests, and other sources, as specified. According to the State Ethics Commission, UMMS board members do not file financial disclosure statements in their capacity as members of the board.

“Financial interest,” as it applies to the Maryland Public Ethics Law, means (1) ownership of an interest as the result of which the owner has received within the past three years, is currently receiving, or in the future is entitled to receive, more than \$1,000 per year; (2) ownership of more than 3% of a business entity by an official, an employee, or a spouse of an official or employee; or (3) ownership of securities of any kind that represent, or are convertible into, ownership of more than 3% of a business entity by an official, an employee, or the spouse of an official or employee.

“Business entity,” as it applies to the Maryland Public Ethics Law, means a person engaged in business, whether profit or nonprofit, regardless of form.

Sole Source Procurement

Generally, whenever a procurement officer determines that there is only one available source for the subject of a procurement contract, the procurement officer may award the procurement contract without competition to that source. Before awarding a procurement contract to a sole source, the procurement officer must obtain the approval of the head of the unit and any other approval required by law. Within 30 days after the execution and approval of a sole source procurement contract, a unit must publish notice of the award in eMaryland Marketplace.

The board is generally not subject to State procurement law. However, the board must conduct procurement activities consistent with minority purchasing standards applicable to State agencies.

Office of Legislative Audits

OLA, a unit within the Department of Legislative Services, is responsible for conducting audits of each department, agency, unit, and program within the Executive and Judicial branches, and for reporting the findings to the Joint Audit Committee of the General Assembly. In addition, OLA audits the financial management practices of local school systems in the State. OLA audits are conducted in accordance with generally accepted government auditing standards issued by the U.S. Government Accountability Office.

Additional Comments: Although no State funds are affected, UMMS likely incurs costs of at least \$500,000, primarily to employ a CPA firm to conduct the required performance audits and for the board to conduct an internal review of its policies and procedures. In addition, UMMS advises that changes to the membership and appointment process may adversely impact its bond rating – due to loss of independence – and result in increased interest expenditures and decreased debt capacity.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Governor's Office; University of Maryland Medical System; Maryland Department of Health; State Ethics Commission; Department of Legislative Services

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