

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE
Revised

Senate Bill 143 (Senator Hollinger, *et al.*)

Finance

Acquisition of Nonprofit Health Entities

This bill prohibits the acquisition of a nonprofit health entity unless the acquisition has been approved by either the Attorney General in consultation with the Department of Health and Mental Hygiene (DHMH) or the Insurance Administration. An acquisition will be approved if it: (1) safeguards the value of public or charitable assets (“assets”); (2) ensures no part of the assets inure directly or indirectly to officers/trustees of the nonprofit health entity; and (3) ensures that the “fair value” of the assets be distributed in a specified manner. Specifically, the fair value of the assets of a nonprofit health service plan or HMO must be distributed to the Maryland Health Care Foundation (MHCF) and 40% of the fair value of the assets of a nonprofit hospital acquisition must be distributed to MHCF with the remaining 60% going to another public or nonprofit charitable health entity or trust.

Fiscal Summary

State Effect: The bill’s requirements could be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: Minimal. The only small businesses affected by the bill are nonprofit dental HMOs.

Fiscal Analysis

Bill Summary: The acquisition of a nonprofit hospital must have the approval of the Attorney General in consultation with DHMH. The acquisition of a nonprofit health service plan or HMO must have the approval of the Insurance Administration.

A person intending to acquire a nonprofit health entity must submit an application, which includes the name of the transferor, transferee, other parties to the acquisition, the sale price, the acquisition agreement, and other related documents to the appropriate regulating entity.

The transferee must pay the reasonable cost of any expert assistance contracted by the regulating entity to evaluate the application.

The regulating entity may determine that a distribution of assets is not required if the transaction is: (1) determined not to be an acquisition; (2) in the ordinary course of business; and (3) for fair value. The determination of fair value must include an assessment of: (1) the value of the assets if the stocks are freely transferable and available for purchase without restriction; (2) the market value; (3) the value as a going concern; (4) the investment or earnings value; (5) the net asset value; and (6) a control premium, if any.

The regulating entity will publish notice of the application for acquisition and hold a public hearing. The bill also provides the time frame within which the acquisition will be approved.

The bill does not apply to the acquisition of a foreign nonprofit health entity operating in the State if the applicable regulating entity determines that the assets of the nonprofit health care entity that serve the health care needs of the State would be adequately protected. The bill requires the exempted foreign nonprofit health care entity to submit an acquisition application to the applicable regulating entity for informational purposes.

Background: Currently, the Insurance Administration has regulatory oversight over conversions and acquisitions of nonprofit health service plans and HMOs. In addition, the law requires the Insurance Commissioner to consult with DHMH if the transaction involves an HMO. In the event of a nonprofit hospital acquisition in Maryland, as long as there are no changes to hospital beds or services, the affected parties are only required to notify the Health Resources Planning Commission of the proposed transaction.

State Expenditures: The Office of the Attorney General advises that expenditures could increase by \$39,534 in fiscal 1999, which reflects the October 1, 1998 effective date. This estimate accounts for the cost of hiring two half-time positions (one half-time Attorney and one half-time Secretary) to provide the regulatory oversight required by the bill. The estimate includes salaries, fringe benefits, one-time costs, and ongoing operating expenses.

Currently, 49 of the 50 acute-care hospitals in Maryland are nonprofit. The workload for the Office of the Attorney General will increase in the event a nonprofit hospital submits an acquisition application. The timing and frequency of such an event, however, cannot be reliably anticipated at this time. Moreover, the bill provides that the regulating entity may contract for expert assistance to evaluate the application at the expense of the transferee. Consequently, the Department of Legislative Services advises that any workload increase for the Office of the Attorney General associated with developing regulations could be handled with existing budgeted resources and any future expenditures arising from the review of an

acquisition application would be reimbursed by the transferee.

The Insurance Administration would be able to satisfy the bill's requirements with existing budgeted resources.

Information Source(s): Maryland Insurance Administration; Department of Health and Mental Hygiene (Health Care Access and Cost Commission, Health Resources Planning Commission); Department of Budget and Management; Office of the Attorney General; Department of Legislative Services

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