SB 880

Department of Legislative Services

Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 880 (Senator Van Hollen, *et al.*)
Rules

Acquisition of a Nonprofit Health Service Plan - Prohibition

This bill prohibits a nonprofit health service plan from being acquired. In addition, a person may not engage in an acquisition of a nonprofit health service plan. If the Insurance Commissioner determines that a nonprofit health service plan or a nonprofit HMO is in violation of the bill's provisions, the Commissioner may require that the certificate of authority to operate as a nonprofit health service plan or HMO be revoked or suspended, or subject the plan or HMO to a penalty of up to $50,000.

The bill takes effect June 1, 2002.

Fiscal Summary

State Effect: The civil penalty provisions of this bill are not expected to significantly affect State finances or operations.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Acquisitions of nonprofit health entities (nonprofit hospitals, health service plans, or HMOs) are governed by statute. An acquisition includes: (1) a sale, lease, transfer, merger, or joint venture that results in the disposal of the assets of a nonprofit health entity to a for-profit corporation, a mutual benefit corporation, or any entity when a substantial and significant portion of a nonprofit health entity's assets are

involved; (2) a transfer of ownership, control, responsibility, or governance of a substantial or significant portion of the assets or operations of a nonprofit health entity to any for-profit corporation or mutual benefit corporation; (3) a public offering of stock; or (4) a conversion to a for-profit entity.

Background: The conversion of nonprofit health entities, including hospitals and health service plans, has been the subject of great debate in recent years. State regulators have grappled with preserving the public assets of nonprofit entities that choose to convert to for-profit. Traditionally, nonprofit entities do not have to pay taxes on the basis that they provide a direct benefit to the community. The assets accrued by a nonprofit are generally considered public assets and must remain with the public.

Nonprofit health service plan conversions raise a number of issues, including: loss of community control; potential decrease in access to and availability of health care services; private benefit; breach of fiduciary duty and conflict of interest; preservation of financial value of the nonprofit; and disposition, protection, and appropriate use of nonprofit assets. Maryland addressed many of these issues in 1998 when the General Assembly altered and updated the statutory process regulating the conversion of nonprofit health service plans. The conversion statute enacted in 1998 requires the Insurance Commissioner to approve a nonprofit health service plan's application to convert unless the Commissioner finds the acquisition is not in the public interest. The statute expressly provides that a conversion is not in the public interest unless appropriate steps have been taken to ensure the value of the public or charitable assets is safeguarded and to ensure that the fair value of those assets is distributed to the Maryland Health Care Foundation. The foundation is required to place any funds received as a result of a conversion in a trust for use pending legislative enactment.

On November 20, 2001, CareFirst BlueCross BlueShield announced its intention to convert to a for-profit company and subsequently be acquired by California-based WellPoint Health Networks, Inc. CareFirst is statutorily obligated to file a conversion application with all three jurisdictions to which its charitable assets would inure: Maryland, the District of Columbia, and Delaware. The application was filed with the Maryland Insurance Administration on January 11, 2002. The $1.3 billion purchase price is one indication of the value of the company's charitable assets.

In an advice letter dated January 22, 2002, the Attorney General of Maryland concluded that the General Assembly may enact legislation that places restrictions or conditions on a conversion or prohibits a conversion entirely.

In addition, the Attorney General concluded in an advice letter dated February 19, 2002 that if this bill is not enacted, it will have no bearing on the Insurance Commissioner's

review of the CareFirst transaction. This advice letter also states that should this bill become law, the conversion process would come to an end without any review at all by the Insurance Commissioner.

Additional Information

Prior Introductions: None.

Cross File: HB 1254 (Delegates Pendergrass and Mitchell) – Economic Matters.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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Analysis by: Susan D. John

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510