

**Department of Legislative Services**  
Maryland General Assembly  
2002 Session

**FISCAL NOTE**  
**Revised**

House Bill 141  
Economic Matters

(Delegate Morhaim)

Finance

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**Acquisition of Nonprofit Health Entities - Limitations on Officers, Directors, and Trustees**

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This emergency bill specifies that an officer, director, or employee of a nonprofit health service plan may not profit from an acquisition or proposed acquisition in the form of any compensation arrangement other than a salary from the transferee in exchange for future services to the company.

The bill also provides that in the case of an acquisition of a nonprofit health entity, the acquisition is not in the public interest unless appropriate steps have been taken to ensure that no officer, director, trustee, or employee of the nonprofit health entity profits from the acquisition in the form of any compensation arrangement other than a salary in exchange for future services to the company.

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**Fiscal Summary**

**State Effect:** None. The bill would not directly affect governmental operations or finances.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Acquisitions of nonprofit health entities (nonprofit hospital, health service plan, or HMO) 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 the 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.

The appropriate regulating entity must approve an acquisition unless it finds the acquisition is not in the public interest. An acquisition is not in the public interest unless appropriate steps have been taken to safeguard public or charitable assets, including ensuring that no part of these assets inure directly or indirectly to an officer, director, or trustee of a nonprofit health 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 have been freed from their obligation 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 bill's provisions would deem an acquisition not in the public interest if the officers, directors, or trustees of the nonprofit health entity profit from the acquisition.

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.

## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Insurance Administration, Department of Health and Mental Hygiene, Department of Legislative Services

**Fiscal Note History:** First Reader - February 10, 2002  
mam/cer Revised - House Third Reader - March 29, 2002

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