

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

**FISCAL NOTE**  
**Revised**

House Bill 1311  
Economic Matters

(Delegate Donoghue)

Finance

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**Nonprofit Health Entities - Blue Cross and Blue Shield Trademarks**

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This emergency bill requires a nonprofit health service plan that operates under, uses, or displays a Blue Cross or Blue Shield trademark or service mark registered with the Secretary of State or the U.S. Patent and Trademark Office to be organized and operated as a private nonprofit corporation and comply with the provisions of the Maryland Insurance Article relating to nonprofit health service plans.

An acquisition of a nonprofit health service plan or HMO is not in the public interest unless appropriate steps have been taken to ensure that a Blue Cross or Blue Shield trademark or service mark used by the nonprofit health service plan or HMO is not acquired by a transferee or other for-profit corporation.

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**Fiscal Summary**

**State Effect:** Enforcement could be handled with existing Maryland Insurance Administration (MIA) resources.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** If a nonprofit health service plan does not comply with certain provisions of the Maryland Insurance Article, the Insurance Commissioner may revoke the certificate of authority issued to the plan.

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.

**Blue Cross Blue Shield Association (BCBSA):** BCBSA is the trade association of independent, locally-operated Blue Cross Blue Shield plans across the nation. BCBSA owns all Blue Cross Blue Shield trademarks and service marks and controls their use by local plans.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 4, 2002  
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