

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

Senate Bill 592

(Senator Neall, *et al.*)

Finance

Economic Matters

Acquisition of Nonprofit Health Entities - Limitations on Approval - Public
Interest

This bill changes various terms and conditions relating to the acquisition of a nonprofit health entity.

The bill takes effect June 1, 2002.

Fiscal Summary

State Effect: The bill would not substantively change State activities or operations.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill provides that the acquisition of a nonprofit health entity is not in the public interest if an officer, director, or trustee of the nonprofit health entity receives any immediate or future remuneration of any kind as the result of the acquisition except for compensation paid for continued employment. In addition, an acquisition is not in the public interest if an agreement or contract for the acquisition includes a provision or other requirement that the nonprofit health entity is required to make a payment (“break-up fee”) if the agreement or contract is broken by the nonprofit health entity.

The bill alters current law by prohibiting the appropriate State regulating entity from approving an application for acquisition of a nonprofit health entity unless the regulating entity finds that the acquisition is in the public interest. Currently, the regulating entity is required to approve an acquisition unless it finds the acquisition is not in the public interest. The bill repeals a provision of current law that deems an application approved if the appropriate State regulating entity fails to take action on the application within 60 days after the record has been closed.

The bill provides that the regulating entity's approval or disapproval determination of an acquisition may not take effect until 90 days after the determination is made.

The bill also contains a severability provision specifying that if any provision of the bill is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions of the bill that can be given effect without the invalid provision.

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.

Under current law, the regulating entity must approve an acquisition unless it finds the acquisition is not in the public interest. Therefore, the presumption of fact under current law is that an acquisition *is* in the public interest until proven otherwise. The bill alters this presumption by providing that the regulating entity cannot approve an acquisition unless it finds the acquisition is in the public interest. Consequently, the presumption of fact is that an acquisition is not in the public interest until affirmatively proven otherwise. The practical effect of altering this presumption of fact is to shift the burden of proving whether an acquisition is in the public interest from the regulating entity to the proponents of acquisition.

The appropriate regulating entity must approve or disapprove the acquisition within 60 days after the record has been closed. If the regulating entity has not approved or disapproved the acquisition within the 60-day time period, and has not extended the time period for good cause, the acquisition is deemed approved.

If necessary, a regulating entity may extend the 60-day period after the record is closed, for good cause, in order to approve or disapprove the acquisition. The regulating entity is limited to a maximum of two 60-day extensions. The regulating entity may require extensions to determine the impact of the acquisition on the public interest, the fair value of charitable assets, and other considerations, such as the impact on shareholders, enrollees, and certificate holders.

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.

Maryland's 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. CareFirst executives are expected to receive \$33.2 million in compensation if acquired by WellPoint.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene (Health Services Cost Review Commission, Maryland Health Care Commission), *The Baltimore Sun*, Maryland Insurance Administration, Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2002
lc/jr Revised - Senate Third Reader - March 27, 2002

Analysis by: Susan D. John

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