HB 1254

Department of Legislative Services

Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

House Bill 1254 (Delegate Pendergrass, *et al.*)
Economic Matters Finance

Acquisition of a Nonprofit Health Entity - Determination by Regulating Entity

This bill provides that in the event of an acquisition of a nonprofit health service plan, an officer, director, or trustee of the plan is prohibited from receiving any immediate or future remuneration as the result of the acquisition or proposed acquisition, except in the form of compensation paid for continued employment with the company or acquiring entity. Any public or charitable assets received due to an acquisition of a nonprofit health entity must be distributed to a public or nonprofit charitable entity or trust in the form of cash. In addition, the appropriate State regulating entity must determine, as part of the acquisition process, whether a payment (break-up fee) by a nonprofit health entity to the acquiring entity, in the event an acquisition does not proceed, is in the public interest. The bill also provides that a determination regarding an acquisition of a nonprofit health entity may not take effect until the later of: (1) 90 calendar days after the date the determination is made; or (2) the last day of the legislative session that begins after the date the determination is made.

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

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.

Depending on the type of nonprofit health entity that applies to be acquired, either the Attorney General or the Insurance Commissioner is deemed the appropriate regulating entity. The appropriate regulating entity must approve or disapprove the acquisition within 60 days after the record, including a public hearing process, has been closed. For good cause, the regulating entity may extend the time for making a determination, using a maximum of two 60-day extensions.

There are no current legal provisions addressing, in the event of an acquisition, the payment of a break-up fee or the personal enrichment of nonprofit health service plan officers, directors, or trustees in the event of an acquisition.

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: SB 880 (Senator Van Hollen, *et al.*) - Finance.

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

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