SB 487

Department of Legislative Services

Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 487 (Senator Miller, *et al.*)
Finance Economic Matters

Acquisition of Nonprofit Health Entity - Conditions for Approval

This emergency 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.

In addition, 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.

Fiscal Summary

State Effect: None. The change is procedural/technical in nature and would not directly affect governmental finances.

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.

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.

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 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: HB 2 (Delegate Busch, *et al.*) – Economic Matters.

Information Source(s): Department of Health and Mental Hygiene, Office of the Attorney General, Maryland Insurance Administration, Department of Legislative Services

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