HB 448

Department of Legislative Services

Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

House Bill 448 (Delegate Busch, *et al.*)
Economic Matters Finance

Acquisition of Nonprofit Health Entities - Form of Remuneration

This emergency bill requires public or charitable assets of a nonprofit health entity that is being acquired to be distributed to a public or nonprofit charitable entity or trust in the form of cash.

Fiscal Summary

State Effect: The bill would not directly affect governmental operations or 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.

If a nonprofit health service plan is acquired, the fair value of the assets of the plan must be transferred to the Maryland Health Care Foundation. No part of the public or charitable assets of the acquisition may inure directly or indirectly to an officer, director, or trustee of the nonprofit health entity.

If the foundation receives a distribution of public or charitable assets as a result of a nonprofit health entity acquisition after June 1, 2001, the Maryland Health Care Trust is created. The foundation is the trustee; however, the trust is subject to modification or termination by the General Assembly. The trust will accept and retain moneys for future expenditures to be used to implement acts of the General Assembly that improve the health status of Maryland residents and that specifically direct the use of the trust's assets. Moneys expended from the trust are supplemental to, and are not intended to take the place of, State funds that would otherwise be appropriated by the State for the improvement of the health care status of Maryland residents.

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.

This bill attempts to alleviate any potential conflict of interest for the State that may arise from the Maryland Health Care Trust's possession of stock in a health entity, since the State conducts business with a variety of health entities. The Maryland Health Care Foundation, trustee of the Health Care Trust, was established in 1997 (Chapter 180 of 1997) as a charitable, not-for-profit organization to support efforts to increase and improve access to quality health care for the uninsured, underinsured, and medically-underserved residents of Maryland.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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