
By: **Senators Middleton, Astle, Brochin, Currie, Della, Exum, Gladden,
Hafer, Hollinger, Kelley, Klausmeier, Pipkin, Stoltzfus, and Teitelbaum
Teitelbaum, and Harris**

Constitutional Requirements Complied with for Introduction in the last 35 Days of
Session

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Assigned to: Finance

Committee Report: Favorable with amendments

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CHAPTER _____

1 AN ACT concerning

2 **Joint Committee to Investigate CareFirst, Inc.**
3 **Study of CareFirst and the Laws Affecting Nonprofit Health Service Plans**

4 FOR the purpose of establishing a Joint Committee to Investigate CareFirst, Inc.;
5 providing for the membership of the Committee; providing for staffing of the
6 Committee; requiring the Committee to identify certain civil, criminal, and
7 administrative laws that impact certain duties of directors of nonprofit health
8 service plans; requiring the Committee to investigate whether certain civil,
9 criminal, and administrative laws were violated by the decision of the board of
10 directors of a certain nonprofit health service to convert to a for-profit entity;
11 requiring the Committee to identify individuals who have standing to bring a
12 certain cause of action against the board of directors of a nonprofit health
13 service plan; requiring the Committee to determine whether changes are needed
14 to the civil, criminal, or administrative laws affecting the boards of directors of
15 nonprofit health service plans; authorizing the Committee to use certain
16 resources in carrying out its duties; authorizing the Committee to issue
17 subpoenas, compel the attendance of witnesses and the production of
18 documents, administer oaths, and cause the deposition of certain witnesses;
19 authorizing the Committee to take certain action to compel compliance with
20 certain subpoenas or testimony; requiring the Committee to issue a final report
21 by a certain date; requiring the Maryland Insurance Commissioner to make a
22 certain determination regarding whether conduct identified in a certain order
23 issued by the Maryland Insurance Administration violates certain provisions of

1 the Insurance Article; requiring the Insurance Commissioner to take certain
2 action based on a certain determination; requiring the Insurance Commissioner
3 to report certain findings on or before a certain date; requiring the Insurance
4 Commissioner to make certain recommendations and report on or before a
5 certain date; requiring the Office of the Attorney General to make a certain
6 determination regarding whether conduct identified in a certain order issued by
7 the Maryland Insurance Administration violates certain provisions of federal or
8 State law; requiring the Office of the Attorney General to report certain findings
9 and recommendations on or before a certain date; providing for the termination
10 of this Act; and generally relating to the Joint Committee to Investigate
11 CareFirst, Inc. relating to a study of CareFirst and the laws affecting nonprofit
12 health service plans.

13 Preamble

14 WHEREAS, CareFirst, Inc., is Maryland's Blue Cross Blue Shield Plan; and

15 WHEREAS, The mission of CareFirst is to provide the most affordable and
16 accessible health insurance to Maryland citizens; and

17 WHEREAS, CareFirst is the State's largest health insurer; and

18 WHEREAS, On January 11, 2002, CareFirst filed an application with the
19 Maryland Insurance Commissioner to convert to a for profit company and be acquired
20 by a California based health insurer for \$1.3 billion; and

21 WHEREAS, On March 5, 2003, after extensive review, the Maryland Insurance
22 Commissioner found that the proposed sale and conversion of CareFirst is not in the
23 public interest; and

24 WHEREAS, The Insurance Commissioner found that the Board of Directors of
25 CareFirst misapprehended, or ignored, its overriding responsibility to the mission of
26 CareFirst and its insureds — to provide coverage at a minimum cost and expense; and

27 WHEREAS, The Insurance Commissioner found that the management of
28 CareFirst did not view their corporate mission as restraining or guiding their
29 business activities; and

30 WHEREAS, The Insurance Commissioner found that the Board of Directors of
31 CareFirst failed to seek and consider material information relevant to the decision to
32 convert, information which an ordinarily prudent person would have sought and
33 considered under the same circumstances, and which would likely have caused a
34 prudent board to reconsider the decision to convert; and

35 WHEREAS, The Insurance Commissioner found that the management of
36 CareFirst insisted on large bonuses and permanent roles in the combined company
37 that conflicted with the interests of CareFirst; and

38 WHEREAS, The Insurance Commissioner found that the decision of the Board
39 of Directors of CareFirst to grant merger incentives was an egregious breach of its

1 duties of care and loyalty and that a key motivation behind the conversion was
2 enrichment of the executives of CareFirst; now, therefore,

3 SECTION 1. ~~BE IT ENACTED BY THE GENERAL ASSEMBLY OF~~
4 ~~MARYLAND, That:~~

5 (a) ~~There is a Joint Committee to Investigate CareFirst, Inc.~~

6 (b) ~~The Committee consists of the following members:~~

7 (1) ~~three members of the Senate of Maryland, appointed by the President~~
8 ~~of the Senate; and~~

9 (2) ~~three members of the House of Delegates, appointed by the Speaker~~
10 ~~of the House.~~

11 (c) ~~The President of the Senate and the Speaker of the House of Delegates~~
12 ~~shall appoint a Senator and a Delegate, respectively, to serve as co-chairmen.~~

13 (d) ~~The Office of the Attorney General shall provide staff assistance to the~~
14 ~~Committee.~~

15 (e) ~~The Committee shall:~~

16 (1) ~~identify the current civil, criminal, and administrative laws that~~
17 ~~impact the duties of the board of directors of a nonprofit health service plan;~~

18 (2) ~~investigate whether any civil, criminal, or administrative laws were~~
19 ~~violated by the decision to convert to a for profit entity by the Board of Directors of~~
20 ~~CareFirst, Inc.;~~

21 (3) ~~identify those individuals who have standing to bring a cause of~~
22 ~~action against the board of directors of a nonprofit health service plan; and~~

23 (4) ~~determine whether any changes need to be made to the civil,~~
24 ~~criminal, and administrative laws that impact the duties of the board of directors of a~~
25 ~~nonprofit health service plan.~~

26 (f) (1) ~~In carrying out its duties, functions, or powers the Committee may:~~

27 (i) ~~draw on any available sources of information that the~~
28 ~~Committee considers useful, including information obtained from State agencies~~
29 ~~relating to the conversion of CareFirst, Inc.;~~

30 (ii) ~~issue subpoenas;~~

31 (iii) ~~compel the attendance of witnesses;~~

32 (iv) ~~compel the production of any papers, books, accounts,~~
33 ~~documents, and testimony;~~

1 (v) administer oaths; and

2 (vi) cause the depositions of witnesses, who reside in or outside of
3 the State, to be taken in the manner provided by law for taking depositions in a civil
4 case.

5 (2) ~~If a person fails to comply with a subpoena issued under this section
6 or fails to testify on any matter on which the person lawfully may be interrogated, on
7 petition of a member of the Committee, a circuit court may pass an order directing
8 compliance with the subpoena or compelling testimony and may enforce the order by
9 proceedings for contempt.~~

10 (g) ~~The Committee shall issue a report of its findings and recommendations to
11 the General Assembly on or before December 31, 2003.~~

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That:

14 (a) The Maryland Insurance Commissioner shall:

15 (1) determine whether any conduct identified in MIA No: 2003-02-032
16 violates the provisions of § 14-116 or § 14-139 of the Insurance Article or any other
17 provision of the Insurance Article not identified in MIA No: 2003-02-032;

18 (2) take any action deemed appropriate in light of the determinations
19 made, if any, under item (1) of this subsection;

20 (3) report on or before July 1, 2003 on the determinations made, if any,
21 under item (1) of this subsection to:

22 (i) the board of directors of a nonprofit health service plan subject
23 to the provisions of § 14-115(d) of the Insurance Article; and

24 (ii) the Governor, and subject to § 2-1246 of the State Government
25 Article, the General Assembly; and

26 (4) make recommendations regarding whether any changes to Maryland
27 law need to be made in order to ensure that the regulatory oversight of nonprofit
28 health service plans subject to Title 14 of the Insurance Article is sufficient to protect
29 the public interest, and report those recommendations, on or before July 1, 2003, to:

30 (i) the Governor;

31 (ii) subject to § 2-1246 of the State Government Article, the
32 General Assembly; and

33 (iii) the Office of the Attorney General.

34 (b) The Office of the Attorney General shall:

1 (1) determine whether any conduct identified in MIA No: 2003-02-032
2 violates any provision of federal or State civil, criminal, or administrative law, other
3 than those provisions reviewed by the Insurance Commissioner under subsection
4 (a)(1) of this Section;

5 (2) report on or before September 1, 2003 to the Governor, and subject to
6 § 2-1246 of the State Government Article, the General Assembly on the
7 determinations made, if any, under item (1) of this subsection and identify any
8 changes to State law that need to be made in order to ensure that the public interest
9 is protected.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 June 1, 2003. It shall remain effective for a period of ~~7~~ 4 months and, at the end of
12 ~~December 31~~, September 30, 2003, with no further action required by the General
13 Assembly, this Act shall be abrogated and of no further force and effect.