

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 150 (Delegate Morhaim, *et al.*)
Health and Government Operations

Acquisition of a Nonprofit Health Entity - Determination by Regulating Entity

This emergency bill specifies that, in a situation where the appropriate State regulating entity approves an acquisition of a nonprofit health entity: (1) the determination of approval may not take effect until the last day of the next regular session of the General Assembly beginning after the date the determination is made; and (2) the General Assembly may take action to approve, disapprove, or modify the determination.

Fiscal Summary

State Effect: Any change in State activities would not materially affect State 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.

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. When the appropriate regulating entity either approves or disapproves the acquisition, the determination cannot take effect until 90 calendar days after the date the determination was made.

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.

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 \$1.37 billion purchase price is one indication of the value of the company's charitable assets. Independent valuations have estimated between \$1.7 billion to \$1.8 billion.

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 response to CareFirst's proposed conversion, the General Assembly passed Chapter 154 of 2002, which provides that a determination of approval or disapproval regarding an acquisition of a nonprofit health entity may not take effect until 90 calendar days after the date the determination is made. The Insurance Commissioner, the regulating entity, is expected to make a determination in late February 2003.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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ncs/jr

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