Department of Legislative Services

Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 4 (Senator Middleton)
Finance Health and Government Operations

Regulation and Acquisition of Nonprofit Health Entities

This bill makes various changes to the current State regulation of nonprofit health service plans.

The bill takes effect June 1, 2004.

Fiscal Summary

State Effect: The civil and criminal penalty provisions of this bill are not expected to significantly affect State finances or operations.

Local Effect: The civil and criminal penalty provisions of this bill are not expected to significantly affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies that a nonprofit health service plan (plan) must recognize a responsibility to contribute to the improvement of the overall health status of residents of the jurisdictions in which the plan operates. It requires a plan's mission to be in accordance with the plan's charter.

To the extent that a plan's legislatively-enacted charter or the laws of the plan's home jurisdiction prohibit the plan from complying with the plan's mission, the charter or home jurisdictional laws control. The Insurance Commissioner, when reviewing a plan's certificate of authority renewal application, must consider the plan's inability to comply

with the mission requirements as a result of a conflict with the plan's legislatively-enacted charter or home jurisdictional laws.

A plan's board must approve in advance any action that materially modifies its business practices or health insurance products sold in the State.

A plan board member must act in a manner that is consistent with the plan's mission. A board member may not use board membership for personal or financial enrichment to the detriment of the plan or the plan's mission. The board must ensure that adequate consideration is given to an independent valuation of the plan before considering any bid or offer to acquire the plan and to convert to a for-profit entity.

The bill also holds plan officers to fiduciary standards similar to those to which board members are held. A violation of an officer's fiduciary duties is considered an unsound or unsafe business practice under the Insurance Article.

If the Insurance Commissioner has issued a warning to a plan officer or director in response to an unsound or unsafe business practice and the officer or director fails to take appropriate action in response to that warning, the bill permits the Insurance Commissioner to impose a civil penalty not exceeding $125,000.

The bill also specifies that an application of a nonprofit health entity acquisition must include: (1) an independent valuation of the entity that was obtained prior to the consideration of any bid or offer to acquire it; and (2) an antitrust analysis prepared by an appropriate expert. An acquisition is not in the public interest unless appropriate steps have been taken to ensure that the value of public or charitable assets is spent in a manner that corresponds with the potential risk associated with an acquisition.

The bill specifies the due diligence standard required when the appropriate regulating entity considers an application for acquisition. A regulating entity may not determine that due diligence was exercised unless the nonprofit health entity considered the risks of an acquisition, including whether an acquisition: (1) would result in diseconomies of scale; or (2) would violate federal or State antitrust laws.

The bill modifies the statute of limitations from one year to three years on the criminal prosecution of a person charged with a misdemeanor offense under Title 14 of the Insurance Article, which governs entities that act as health insurers.

An individual who was reappointed to the board for a one-year term on January 1, 2004 as the representative of an affiliated out-of-state plan may serve on the board for an additional one-year term until December 31, 2005. This provision is limited to no more than two of the plan's current board members.

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.

A person seeking to acquire a nonprofit health entity must submit an application to the appropriate regulating entity that includes such information as the names of the transferor and transferee; a copy of the acquisition agreement; the terms of the proposed acquisition, including the sales price; and a financial and community impact analysis report from an independent expert.

If the Insurance Commissioner believes an officer or director of a nonprofit health service plan has engaged in an unsound or unsafe business practice, the Commissioner must send a warning to that individual.

In general, a prosecution for a misdemeanor offense must be instituted within one year after the offense was committed. A person who is guilty of a misdemeanor violation under the Nonprofit Health Service Plan subtitle of the Insurance Article is subject to a fine not exceeding $5,000 per violation or imprisonment not exceeding one year or both.

Generally, the term of a board member is three years. The terms of the members must be staggered over a three-year period. A member may not serve for more than two full terms or more than six years total.

Background: 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 was 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 (MIA) on January 11, 2002. Maryland Insurance Commissioner Steven B. Larsen announced on March 5, 2003 that he had denied the CareFirst BlueCross BlueShield application to convert to a for-profit company and be acquired by WellPoint Health Networks, Inc. The proposed transaction was not in the public interest because of several disqualifying factors, enumerated in the MIA Conversion Report issued March 5, 2003.

Chapters 356/357 of 2003 requires the Insurance Commissioner and the Attorney General to make recommendations regarding changes to State law to ensure that the regulatory oversight of nonprofit health service plans is sufficient to protect the public interest and report those recommendations to the Governor and the General Assembly. Following enactment of this legislation, the District of Columbia Insurance Commissioner expressed concern that the new law usurped the District Commissioner's authority over the CareFirst, Inc. affiliate domiciled in the District.

There are currently six CareFirst, Inc. board members who represent CareFirst's District of Columbia affiliate, Group Hospitalization and Medical Services, Inc. If enacted, this bill would permit two of those six to serve an additional one-year term ending December 31, 2005.

State Fiscal Effect: The civil penalty provisions of this bill are not expected to significantly affect State finances or operations. Since the Commissioner must first send a warning to a nonprofit health service plan officer or director who has engaged in an unsound or unsafe business practice, it is assumed the individual will attempt to correct noncompliant business practices to avoid being fined.

The increased statute of limitations for prosecuting misdemeanors could result in more criminal prosecutions, which could result in the imposition of fines up to $5,000 or one year imprisonment, or both. Any such increase cannot be accurately estimated, but is assumed to be minimal.

Additional Information

Prior Introductions: None.

Cross File: HB 341 (Delegate Hurson), although listed as a cross file is different.

Information Source(s): *Legislative Report of the Maryland Insurance Administration on MIA Order 2003-02-032*, Maryland Insurance Administration; Department of Legislative Services

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