

**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**

Senate Bill 29

(Senator Middleton)

Finance

Health and Government Operations

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**Nonprofit Health Service Plans - Compensation of Officers and Executives -  
Authority of Insurance Commissioner**

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This emergency bill repeals the Insurance Commissioner's authority to approve compensation guidelines for all officers and executives of a nonprofit health service plan. A nonprofit health service plan's board is required to provide a copy of compensation guidelines to the Insurance Commissioner on or before September 1, 2004 and annually thereafter.

The bill must be construed to apply retroactively and will be applied to and interpreted to affect the Insurance Commissioner's authority over compensation guidelines on or after June 6, 2003.

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**Fiscal Summary**

**State Effect:** None. The bill codifies current practice.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A nonprofit health service plan must have a compensation committee that develops proposed guidelines for compensation, including salary, bonuses, and perquisites of all officers and executives that are reasonable in comparison to compensation for officers and executives of similar nonprofit health service plans. On or before June 1, 2004, the plan's board must submit the proposed guidelines to the

Insurance Commissioner for review and approval. The Commissioner must review the guidelines and approve or disapprove of them within 60 days. If the Commissioner disapproves the guidelines, the plan's board must review and submit new guidelines that meet the Commissioner's approval.

**Background:** CareFirst BlueCross BlueShield of Maryland, the biggest not-for-profit health insurer in Maryland, attempted to convert to a for-profit corporation in 2002 in order to be acquired by WellPoint Health Networks, Inc. That transaction was the subject of an extensive review by the Maryland Insurance Commissioner, which ended in the Commissioner's denial of the conversion upon a determination that the conversion was not in the public interest. The reasons for the denial are enumerated in the Maryland Insurance Administration (MIA) Conversion Report issued March 5, 2003.

The General Assembly passed House Bill 1189 and Senate Bill 779 (Chapters 356 and 357 of 2003) to address certain concerns that nonprofit health service plans were not meeting their public interest obligations. This new law outlines certain actions a nonprofit health service plan must take to maintain its premium tax exemption and its certificate of authority, and outlines certain actions the plan's board must take to ensure its fiduciary obligations are met. The law also gives the State authority over a nonprofit health service plan's board composition, term limits, and compensation.

On May 21, 2003, the national Blue Cross and Blue Shield Association filed suit in federal court against CareFirst to terminate CareFirst's continued use of the Blue Cross and Blue Shield trademark and name. CareFirst in turn filed suit in federal court against the State, alleging certain provisions of Chapters 356 and 357 of 2003 were unconstitutional. The State subsequently filed suit against the national Blue Cross and Blue Shield Association challenging the association's termination of CareFirst's use of the trademark and name. All three parties attempted to resolve the issues concerning CareFirst's right to use the trademark and name to ensure CareFirst subscribers' uninterrupted access to Blue Cross and Blue Shield branded products and services while also protecting the public interest. On June 6, 2003, the U.S. District Court of Maryland issued an order and consent judgment resolving the issues among the State, the association, and CareFirst. Part of this order altered the provision of Chapters 356 and 357 that gave the Insurance Commissioner authority over compensation guidelines for CareFirst officers and executives.

**State Fiscal Effect:** In response to the District Court's June 6, 2003 order, MIA changed its administrative operations dealing with reviewing and approving compensation guidelines for nonprofit health service plan officers and executives. Accordingly, the bill codifies current practice and has no fiscal impact.

## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** *Report of the Office of the Attorney General of Maryland Re: CareFirst Inc., MIA Order No. 2003-02-032, Sept. 2, 2003, Maryland Insurance Administration; Department of Legislative Services*

**Fiscal Note History:** First Reader - January 16, 2004  
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