

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 1545
 Appropriations

(Delegate Conway, *et al.*)

Finance

University of Maryland Medical System Corporation - Governance - Medical
 Center Employees

This bill requires the Board of Directors of the University of Maryland Medical System Corporation (UMMSC) to establish a nonprofit subsidiary to operate all or part of the University of Maryland Medical Center (UMMC), to the extent approved by the University of Maryland, Baltimore (UMB) in its annual contract. It authorizes the board to amend its articles of incorporation to add up to three voting members that represent an entity that affiliates with the corporation on or after October 1, 2014. It further establishes that employees of the corporation include employees of a nonprofit subsidiary that operates all or part of the medical center. Finally, it establishes legislative intent that a subsidiary of the corporation fall under the jurisdiction of the National Labor Relations Board (NLRB), and that its employees be subject to the benefits and protections of the National Labor Relations Act (NLRA).

Fiscal Summary

State Effect: None. For budgetary purposes, the University of Maryland Medical System (UMMS) is not a State entity.

Local Effect: None.

Small Business Effect: None. UMMS is not a small business.

Analysis

Bill Summary: The nonprofit subsidiary established by the UMMSC Board of Directors must have all the powers available under the laws governing the formation of the subsidiary and be formed in a manner so that the subsidiary meets the jurisdictional

requirements of NLRB. It does not constitute a department or administrative arm of the State or any agency, political subdivision, public body, public corporation, or municipal corporation, and it is not administered by individuals who are responsible to public officials or to the general electorate.

If the board adds any voting members to represent an affiliated entity, nominations for those members are made by the board and submitted to the University System of Maryland's (USM) Board of Regents for comment and to the Governor for consideration. Any member appointed to represent an affiliated entity is appointed by the Governor and designated as an affiliate board member. The voting membership of the board may not exceed 30 members. The bill may not be construed to require the corporation to nominate a representative of an entity that affiliates with it on or after October 1, 2014, to be an additional board member.

Nothing in the bill may be construed to affect the recognition of bargaining representatives of employees at UMMC that exist on the bill's effective date. Any collective bargaining agreements in effect on the bill's effective date must be honored by the nonprofit subsidiary, subject to the terms of those agreements and to NLRA requirements. Exclusive representation of individuals employed by UMMSC is not affected by the creation of a new nonprofit subsidiary.

Current Law:

University of Maryland Medical System Corporation

UMMSC is organized for charitable, scientific, and educational purposes. Statute further states that UMMSC is not a State agency, political subdivision, public body, public corporation, or municipal corporation and is not subject to any provisions of law affecting only governmental or public entities. As of the date of transfer from State control (in 1984), UMMSC owns, leases, manages, and operates UMMS, including any components or health services determined by the board. Although not subject to State procurement law, the board must conduct procurement activities consistent with minority purchasing standards applicable to State agencies.

The UMMSC Board of Directors consists of 6 nonvoting members and between 22 and 27 voting members appointed by the Governor, including 2 members of the General Assembly. The board may establish nonprofit or for-profit subsidiaries or related entities to the extent approved by UMB.

National Labor Relations Act

NLRA dates to 1935 with the enactment of the “Wagner Act,” which set forth employees’ rights to join unions and required employers to bargain collectively with unions selected by a majority of workers in an appropriate bargaining unit. It also established NLRB to enforce its provisions. NLRB facilitates the election of collective bargaining representatives by private-sector employees, investigates charges of unfair labor practices, and adjudicates disputes between employers and employees. NLRA does not apply to any state government or political subdivision.

Background: In 1984, the General Assembly determined that University Hospital had become “unnecessarily costly and administratively cumbersome” for UMB to manage the hospital as a State entity. As a result, UMMSC was formed by statute as a “private, nonprofit, nonstock corporation formed under the general corporation laws of this State.” UMMSC includes, among other facilities, UMMC (the former University Hospital), University Cancer Center and the clinical arm of the Maryland Institute for Emergency Medical Services Systems (now called the R. Adams Cowley Shock Trauma Center). At the time UMMSC was formed, staff of UMMC were given the option to remain a UMB employee covered by the university personnel system or to become an employee of UMMS; however, those who elected to become UMMS employees remained eligible for the State Retirement and Personnel System under specified conditions. Employees hired after July 1, 1984, automatically became employees of UMMS.

Since 1984, UMMS has expanded to form affiliations with eight additional member institutions that were previously private hospitals. These affiliated institutions retained some form of separate legal status and maintain separate governance boards. UMMC, however, is governed directly by UMMS and is not a separate legal entity.

The U.S. Supreme Court has held that federal rather than state law governs the determination of the applicability of NLRA. Despite statutory language that UMMS is not a State agency, political subdivision, or public corporation, NLRB has on several occasions determined that UMMS is not subject to NLRA by virtue of being a “political subdivision” or “instrumentality of the State.” An overriding factor in these determinations has been that all voting members of the UMMSC board are appointed by the Governor.

A November 2013 Opinion of the Attorney General indicated that a conclusive determination of UMMS’ status as a State or public entity could not be made, in part because its status has not been consistent under different circumstances. For instance, it has been found not to be a public body with respect to the State’s Open Meeting Act, but it has been found to be an instrumentality of the State under the Public Information Act.

The opinion concluded, however, that UMMS could be made subject to State collective bargaining laws.

Additional Information

Prior Introductions: None.

Cross File: SB 1104 (Senators Middleton and Ramirez) - Finance.

Information Source(s): Office of the Attorney General, National Labor Relations Board, Department of Legislative Services

Fiscal Note History: First Reader - March 12, 2014
mc/ljm Revised - House Third Reader - March 24, 2014

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