

Conversion and/or Sale of a Non-Profit Health Services Plan

*** An Explanation of the Process ***

(The actual text of the State Government Article can be found in an accompanying document on the CareFirst Conversion page of this website)

The sale or conversion of a non-profit health service plan is governed by Title 6.5 of the State Government Article – enacted in 1998, amended in 2001

The Maryland Insurance Commissioner is the regulatory authority

Definitions

- *Non-profit health entity* - a non-profit hospital, a non-profit health service plan, or a non-profit health maintenance organization (HMO)
- *Non-profit health service plan* – a corporation without capital stock with a certificate of authority from the Insurance Commissioner to operate as a non-profit health service plan or a non-profit dental plan
- *Acquisition:*
 - A sale or lease, transfer, merge, or joint venture that results in the disposal of the assets of a non-profit health entity to a for-profit corporation or entity or to a mutual benefit corporation or entity when a substantial or significant portion of the assets of the nonprofit health entity are involved or will be involved in the agreement or transaction
 - A transfer of ownership, control, responsibility, or governance of a substantial or significant portion of the assets, operations, business of the nonprofit health entity to any for-profit corporation or entity or to any mutual benefit corporation or entity
 - A public offering of stock
 - A conversion to a for-profit entity
- *Public assets:*
 - Assets held for the benefit of the public or the community
 - Assets in which the public has ownership interest
 - Assets owned by a governmental entity
- *Transferee* - the person in an acquisition that receives ownership or control of the non-profit health entity that is the subject of the acquisition
- *Transferor* - the non-profit health entity that is the subject of the acquisition, or the corporation that owns the non-profit health entity that is the subject of the acquisition

Approval

- A sale or conversion (acquisition) cannot occur unless the Commissioner has given approval
- The Commissioner shall approve the sale or conversion (acquisition) unless he finds the acquisition not to be in “the public interest”

Initiation of Process

- The process begins with an application which includes the terms of the acquisition, sale price, copy of acquisition agreement, and financial and community impact analysis

Confidentiality

- The application and documents are confidential unless:
 - The non-profit health services plan gives consent for disclosure, or
 - The Commissioner determines, after giving the plan notice and an opportunity to be heard, that the disclosure serves the interest of policyholders, stockholders, or the public

Notice of Application

- Within 10 days after receipt of application, the Commissioner shall
 - Publish notice in the most widely circulated newspapers in the plan’s service area and
 - Notify by 1st class mail any person who has requested in writing notice of the filing
- Notice shall state the names of the parties to the acquisition, describe the contents of the application, give the date, time, and place of the public hearing on the acquisition, and the date by which the public must submit written comments
- The applicant shall bear the cost of the notices required under the law

Expert Review of Acquisition

- The Commissioner may contract with experts as reasonably necessary to:
 - Determine whether to approve application
 - Perform independent valuation of the public or charitable assets
 - Evaluate the impact on the affected community
 - Determine the due diligence of the plan
 - Determine the existence of conflicts of interest

Quasi-legislative Hearing

- No later than 90 days after receiving a complete application, the Commissioner shall hold a public hearing
- This is a quasi-legislative hearing, not a contested case hearing
- Any person may file written comments and exhibits or make a statement at the public hearing
- The Commissioner may keep the record open beyond the date of the hearing
- Additional hearings may be held as needed
- The Commissioner may subpoena information and witnesses, require sworn statements, take depositions, and use related discovery procedures.

Deadline for Approval on Non-approval

- Within 60 days after closure of the record, the Commissioner shall:
 - Approve the application, with or without modification, or
 - Disapprove the application
- A 60 day extension for good cause is possible at the discretion of the Commissioner
- There can be a maximum of two 60-day extensions

Impact on the Public Interest

- To determine whether an acquisition is in the public interest, the Commissioner shall consider:
 - The plan's due diligence in deciding to engage in acquisition, select a transferee, and negotiate terms and conditions of the acquisition
 - The procedures the plan used in making its decision, including the use of expert assistance
 - Disclosure of conflicts of interest involving any party to the acquisition
 - Whether the transferor will receive fair value for its public or charitable assets.
 - Whether the assets are placed at unreasonable risk if the plan helps to finance the acquisition
 - The likelihood that the acquisition would create significant adverse effect on the availability or accessibility of health care services
 - Whether safeguards are sufficient to ensure continued access to affordable health care
 - Whether any management contract under the acquisition is for fair value
- An acquisition is not in the public interest unless steps are taken to ensure that:
 - The value of the public or charitable assets is safeguarded
 - The fair value of the public or charitable assets of the plan are distributed to the Maryland Health Care Foundation or some other Trust as designated by the Maryland General Assembly

- No part of the public or charitable assets of the acquisition directly or indirectly benefit an officer, director or trustee of the plan

Determination of Fair Value

- To determine fair value, the Commissioner may consider all relevant factors including:
 - Value as if the plan had voting stock, freely transferable and available for purchase without restriction
 - The plan's value as a going concern
 - The plan's market value
 - The plan's investments or earnings value
 - The plan's net asset value
 - A control premium, if any

Additional Considerations

- The Commissioner shall also consider whether:
 - The acquisition is equitable to enrollees, shareholders, and certificate holders
 - The acquisition complies with Title 2, Subtitle 6 of the Corporations Article
 - The acquiring entity possesses surplus in an amount sufficient to:
 - Comply with surplus required by law
 - Provide security of its certificate holders and policyholders

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