
SENATE BILL 6808

State of Washington

56th Legislature

2000 Regular Session

By Senator Prentice; by request of Insurance Commissioner

Read first time 01/31/2000. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to the conversion of health care service
2 contractors and health maintenance organizations from nonprofit or not-
3 for-profit corporate to for-profit corporate status; adding new
4 sections to chapter 48.44 RCW; and adding new sections to chapter 48.46
5 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.44 RCW
8 to read as follows:

9 The legislature finds that, because of their public purpose,
10 nonprofit or not-for-profit entities operating as health care service
11 contractors have enjoyed certain benefits in the nature of reduced
12 taxes. Those entities have accomplished accumulations of surplus
13 because of their reduced tax burden. Those entities have enjoyed a
14 competitive advantage because of the reduced tax burden.

15 The legislature declares that any competitive advantage or surplus
16 accumulation attributable, even in part, to nonprofit or not-for-profit
17 status should not be freely transferred to any entity.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.44 RCW
2 to read as follows:

3 (1) A health care service contractor operated as a nonprofit or
4 not-for-profit entity under any of the laws of this state may not
5 convert its corporate status to that of a for-profit entity, or
6 transfer to any one or more persons or groups more than ten percent of
7 its assets or in-force contracts, unless it:

8 (a) Files with the commissioner an application for approval of the
9 conversion or transfer that establishes by substantial evidence that
10 the conversion or transfer is in the best interest of the health care
11 service contractor's current subscribers; and

12 (b) Establishes, subject to the approval of the commissioner, a
13 trust for the benefit of residents of this state, that will be used to
14 fund health care services for indigent residents of this state
15 residing in the health care service contractor's service area. The
16 health care service contractor:

17 (i) Will transfer the amount of the trust irrevocably to the
18 trustees, who may not be current or former officers or directors of the
19 health care service contractor or other persons with an intimate
20 relationship to the health care service contractor;

21 (ii) Shall transfer the amount of the trust to the trustees as cash
22 or securities eligible for investment pursuant to chapter 48.13 RCW;
23 and

24 (iii) Shall calculate the amount of the trust as of the date of
25 application to the insurance commissioner for approval of the
26 conversion or transfer. The health care service contractor shall
27 calculate the amount of the trust as all capital and surplus of the
28 health care service contractor at the date of application, less:

29 (A) If the transferee is a for-profit entity, the minimum capital
30 and surplus requirements of the for-profit entity, at the date of
31 application, for the in-force contracts to be transferred; or

32 (B) If the transferee is a nonprofit entity, the minimum capital
33 and surplus requirements for the in-force contracts transferred.

34 (2) With prior notice to the applicant, the commissioner shall
35 within sixty days of receipt of the application required by subsection
36 (1) of this section, either approve the application or deny it if the
37 applicant has not presented substantial evidence that the conversion or
38 transfer is in the best interest of the current subscribers of the
39 applicant.

1 (3) For the purposes of this section, all transfers of assets or
2 in-force contracts within twenty-four months before and twelve months
3 after the date of approval of an application to the insurance
4 commissioner for approval of the conversion to for-profit status or
5 transfer of contracts, will be aggregated to determine whether the
6 health care service contractor has transferred ten percent of its
7 assets or in-force contracts. If it files no application with the
8 commissioner, for the purposes of this section, the commissioner will
9 assume that the health care service contractor has filed an application
10 on the date that a transfer of assets or in-force contracts, when
11 aggregated with all prior transfers within the last five years, equals
12 or exceeds ten percent of the health care service contractor's assets
13 or in-force contracts at the time of the transfer.

14 (4) For the purposes of this section, the commissioner may retain
15 at the health care service contractor's expense such attorneys,
16 actuaries, accountants, and other experts not otherwise part of the
17 commissioner's staff as are reasonably necessary to assist in the
18 evaluation of the health care service contractor's application for
19 conversion or transfer. Persons so retained are under the direction
20 and control of the commissioner and shall act in a purely advisory
21 capacity.

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.46 RCW
23 to read as follows:

24 The legislature finds that, because of their public purpose,
25 nonprofit or not-for-profit entities operating as health care service
26 contractors have enjoyed certain benefits in the nature of reduced
27 taxes. Those entities have accomplished accumulations of surplus
28 because of their reduced tax burden. Those entities have enjoyed a
29 competitive advantage because of the reduced tax burden.

30 The legislature declares that any competitive advantage or surplus
31 accumulation attributable, even in part, to nonprofit or not-for-profit
32 status should not be freely transferred to any entity.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 48.46 RCW
34 to read as follows:

35 (1) A health maintenance organization operated as a nonprofit or
36 not-for-profit entity under any of the laws of this state may not
37 convert its corporate status to that of a for-profit entity, or

1 transfer to any one or more persons or groups more than ten percent of
2 its assets or in-force agreements, unless it:

3 (a) Files with the commissioner an application for approval of the
4 conversion or transfer that establishes by substantial evidence that
5 the conversion or transfer is in the best interest of the health
6 maintenance organization's current subscribers; and

7 (b) Establishes, subject to the approval of the commissioner, a
8 trust for the benefit of residents of this state, that will be used to
9 fund health care services for indigent residents of this state
10 residing in the health maintenance organization's service area. The
11 health maintenance organization:

12 (i) Will transfer the amount of the trust irrevocably to the
13 trustees, who may not be current or former officers or directors of the
14 health maintenance organization or other persons with an intimate
15 relationship to the health maintenance organization;

16 (ii) Shall transfer the amount of the trust to the trustees as cash
17 or securities eligible for investment pursuant to chapter 48.13 RCW;
18 and

19 (iii) Shall calculate the amount of the trust as of the date of
20 application to the insurance commissioner for approval of the
21 conversion or transfer. The health maintenance organization shall
22 calculate the amount of the trust as all capital and surplus of the
23 health maintenance organization at the date of application, less:

24 (A) If the transferee is a for-profit entity, the minimum capital
25 and surplus requirements of the for-profit entity, at the date of
26 application, for the in-force agreements to be transferred; or

27 (B) If the transferee is a nonprofit entity, the minimum capital
28 and surplus requirements for the in-force agreements transferred.

29 (2) With prior notice to the applicant, the commissioner shall
30 within sixty days of receipt of the application required by subsection
31 (1) of this section, either approve the application or deny it if the
32 applicant has not presented substantial evidence that the conversion or
33 transfer is in the best interest of the current subscribers of the
34 applicant.

35 (3) For the purposes of this section, all transfers of assets or
36 in-force agreements within twenty-four months before and twelve months
37 after the date of approval of an application to the insurance
38 commissioner for approval of the conversion to for-profit status or
39 transfer, will be aggregated to determine whether the health

1 maintenance organization has transferred ten percent of its assets or
2 in-force agreements. If they file no application with the
3 commissioner, for the purposes of this section, the commissioner will
4 assume that the health maintenance organization has filed an
5 application on the date that a transfer of assets or in-force
6 agreements, when aggregated with all prior transfers within the last
7 five years equals or exceeds ten percent of the health maintenance
8 organization's assets or in-force agreements at the time of the
9 transfer.

10 (4) For the purposes of this section, the commissioner may retain
11 at the health maintenance organization's expense such attorneys,
12 actuaries, accountants, and other experts not otherwise part of the
13 commissioner's staff as are reasonably necessary to assist in the
14 evaluation of the health maintenance organization's application for
15 conversion or transfer. Persons so retained are under the direction
16 and control of the commissioner and shall act in a purely advisory
17 capacity.

--- END ---