

CHAPTER 58  
FORMERLY  
SENATE SUBSTITUTE NO. 1 FOR  
SENATE BILL NO. 56  
AS AMENDED BY  
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO HEALTH SERVICE CORPORATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

WHEREAS, Delaware courts have recognized that the Delaware Department of Insurance properly applies the statutory criteria outlined in Title 18, Section 5003(d)(1) to any proposed affiliation or transaction between a Delaware health service corporation and any other insurer that affects control of the health service corporation; and

WHEREAS, the Attorney General has substantial common law and statutory authority with respect to any of the aforementioned affiliations or transactions, including but not limited to Title 29, Ch. 25, subch. III; and

WHEREAS, the Department of Insurance and Attorney General must consider a number of factors in determining whether to approve such affiliations or transactions, including whether such transactions are prejudicial to the interests of Delaware policyholders; and

WHEREAS, insurers in other states are managing state CHIP buy-in programs similar to that created by 16 Del.C. § 9909(j);

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Add a new Section 6310 to Title 18 of the Delaware Code, which shall read as follows:

“§ 6310. Affiliations Involving Health Service Corporations

(a) With respect to any proposed change of control affiliation or transaction between (i) a health service corporation licensed under this Chapter and (ii) any insurer that administers a Children’s Health Insurance program buy-in program (“the insurer”), the Commissioner shall not approve the transaction or affiliation unless the affiliation will result in the Delaware-licensed health service corporation offering an insurance plan with the same benefits and eligibility criteria as the Delaware program created under 16 Del.C. § 9909(j).

(i) The specific premiums to be initially charged under this Section shall be approved by the Commissioner as part of the approval for the transaction or affiliation required by this Section, with the analysis required by Chapter 25 of this Title and the premiums charged in other regions whose CHIP buy-in programs are administered by the insurer being factors in the Commissioner’s decision.

(ii) The plan offered pursuant to this Section shall offer to subscribers the same network of health care providers that is offered to subscribers of the Delaware-licensed entity’s standard health insurance plan.

(b) For purposes of this Section, a “change of control affiliation or transaction” is any affiliation or transaction that will ultimately result in any change in effective control of a health service corporation, either as described by the applicant or as determined by the Commissioner.

(c) The obligation imposed under subsection (a) of this Section shall exist until such time that the Commissioner finds that a subsequent change in ownership or governance of the affected Delaware health service corporation has negated the change of control affiliation or transaction that triggered the insurer’s obligation under subsection (a), or until such time that the Commissioner determines that the program has been effectively replaced by federal law, or until such time as the Commissioner determines that the program has become unviable due to insufficient enrollment or unsustainable financial losses. For purposes of this subsection, ‘unsustainable financial losses’ shall require a demonstration of an actual medical loss ratio greater than 90% for each of two completed program years in a three program year period.

(d) For purposes of this Section, a “Children’s Health Insurance buy-in program” is a state program that allows children who would otherwise be ineligible to participate in the state’s CHIP program by virtue of income to nevertheless participate in the program by paying a monthly premium.

(e) For purposes of this Section, “CHIP program” means the federal Children’s Health Insurance Program.

(f) Future adjustments to premiums for any Delaware CHIP buy-in program created pursuant to this Section shall be subject to Chapter 25 of this Title, with premiums charged in other regions whose CHIP buy-in programs are administered by the insurer being a factor considered under Section 2503(a)(3).

(g) Any program created pursuant to this Section shall be actuarially separated from a health service corporation’s other insurance plans, and shall not affect the premiums approved by the Commissioner pursuant to Chapter 25 for those other plans.

(h) The Insurance Commissioner shall provide a report to the Controller General regarding any rate-setting proceeding relating to any CHIP buy-in program created by this Section. Such report shall include any request with respect to rates made by the relevant carrier, any analysis performed by the Insurance Commissioner, and the Insurance Commissioner's ultimate decision with an explanation for that decision. This requirement shall also apply to the initial premium setting required by subsection (a)(i). The report shall be furnished within 30 days of a final decision by the Commissioner with respect to any rate."

Section 2. This Act shall apply to any proposed transaction or affiliation subsequent to its enactment and to any transaction or affiliation pending approval from the Commissioner and/or Attorney General at the time of its enactment.

Section 3. This Act does not affect or diminish the Attorney General's statutory and common law authority with respect to affiliations and other transactions involving health service corporations or other insurers, nor does it affect or diminish the Insurance Commissioner's statutory and common law authority with respect to said transactions and affiliations.

Approved June 27, 2011