

CHAPTER 109  
FORMERLY  
SENATE BILL NO. 146  
AS AMENDED BY  
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 18 AND 29 RELATING TO NOT FOR PROFIT HEALTH CARE CONVERSIONS.

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

Section 1. Amend §2531(1)c., Title 29 of the Delaware Code by striking §2531(1)c. in its entirety and replacing it with the following:

“c. A substantial change or amendment to a certificate of incorporation which materially affects a not-for-profit healthcare entity's charitable or public benefit intent, or the disposition of reserves or control of a not-for-profit healthcare entity to an entity or a person other than a charity or not-for-profit entity.”

Section 2. Amend Chapter 63, Title 18 of the Delaware Code by adding a new § 6310 to read as follows:

“§ 6310. Reserves and Surplus; Holding Company Standards.

(a) Any approval by the Commissioner of a change of control of a health service corporation shall be governed under the provisions of Chapter 50 of this Title and shall be subject to conditions that ensure compliance with this Section. Chapter 50 of this Title shall also govern the ongoing affiliation of a health service corporation following a change of control, but only to the extent that the provisions thereof are not inconsistent with any more stringent provision of this Title or conditions imposed by the Commissioner in connection with approval of such change of control.

(b) If a health service corporation regulated under this chapter proposes to enter into a transaction in which it will become controlled by another entity, the Insurance Commissioner shall place conditions upon any approval of the change of control intended to preserve that amount, determined in accordance with Delaware law, that constitutes the surplus or reserves of the health service corporation. Such conditions shall include, without limitation, requiring:

(i) review and approval by the Department of Insurance of any change in the certificate of incorporation of the health service corporation;

(ii) review and approval by the Department of Insurance of any individual expenditure or transfer of funds or coordinated series of expenditures or transfers of funds by the health service corporation in excess of \$500,000 to the controlling entity or any affiliate of such controlling entity, which review and approval shall assess the commercial reasonableness of the proposed expenditure or transfer;

(iii) a majority of the board of directors of the health service corporation to consist of persons not employed by the health service corporation or any of its affiliates who are residents of Delaware and have been so for at least five years prior to appointment; and

(iv) recognition of, and consent to, the ability of Insurance Commissioner to seek appropriate relief from the Court of Chancery or other court of appropriate jurisdiction to prevent the entity controlling the health service corporation from improperly using the assets of the health service corporation for the benefit of the controlling entity rather than the benefit of the health service corporation and its subscribers, or otherwise violating the terms of this section, Chapter 50, or any agreement between the health service corporation and the controlling entity or affiliate thereof.

(c) Any conditions placed on approval will be enforced by the Insurance Commissioner in accordance with applicable provisions of this Title. Whenever approval must be obtained from the Commissioner for any activity described in this Section, simultaneous notice thereof shall be provided to the Department of Justice.

(d) A health service corporation in dissolution shall, after the discharge of all obligations, distribute all remaining assets to the foundation created under Section 2533 of Title 29.

(e) Terms used in this section shall have the same meaning as defined in Chapter 50 of this Title.”

Section 3. This legislation shall be applicable to all transactions that shall close on and after the effective date.

Approved July 12, 2011